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

**WRIT PETITION NO.8783 OF 2024**

1. The Commissioner, Municipal Corporation  
of Greater Mumbai, CST Station, Fort,  
Mumbai 400 001
2. Ujwala Deshpande, Legal Officer,  
Legal Branch, Municipal Corporation of  
Greater Mumbai, Oppo. CST Station,  
Mumbai 400 001
3. Smt. Jogi, Education Officer, Education  
Department, Municipal Corporation of  
Greater Mumbai, Dadar Hindu Colony,  
Lakhamshi Nappu Marg, Dadar (East),  
Mumbai 400 014

... Petitioners

ATUL  
GANESH  
KULKARNI

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ATUL GANESH  
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**Vs.**

1. Pravin Shantaram Ghag
2. Mahesh Shantaram Ghag
3. Rakesh Vitthal Jadhav
4. Ashok Harishchandra Dabhade
5. Nilesh Ramchandra Haryan
6. Rajesh Ramchandra Haryan
7. Santosh Shriram Shelar
8. Haresh Shriram Shelar
9. Priyanka Prabhakar Ghag
10. Santosh Yashwant Salvi
11. Vasant Babu Varose
12. Santosh Ramchandra Tambe
13. Nilesh Dattaram Patkare

14. Sandesh Shantaram Salvi
15. Arvind Babu Varose
16. Anil Ramnath Gound
17. Deepak Shyamu Kharat
18. Deepak Ganpat Sawant
19. Ajay Janardan Ahire
20. Arun Waman Thosar
21. Chandanshive Prashant Bhimrao
22. Pol Roshidas Keru
23. Khan Amjad Mehmood
24. Solanki Vijay Chhaganlal
25. Waman Shivram Pawar
26. Santosh Shivram Pawar
27. Jangale Sanjay Zilu

... Respondents

Mr. A.V. Bukhari, Senior Advocate with Mr. Burhan Bukhari and Mr. Santosh Parad for the petitioners.

Mr. S.C. Naidu with Mr. Manoj Gujar, Mr. T.R. Yadav, and Mr. Pradeep Kumar i/by C.R. Naidu & Co., for the respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 5, 2026.

PRONOUNCED ON : APRIL 9, 2026

**JUDGMENT:**

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioners have called in question the legality and correctness of the Judgment and Award

dated 5 January 2019 rendered by the Industrial Tribunal, Mumbai in Reference (I.T.) No.10 of 2014.

2. The facts giving rise to the present proceedings, as pleaded by the original complainants, may briefly be stated thus. The Municipal administration of the City and Suburbs of Mumbai is divided into 24 wards. There are approximately 1269 municipal schools functioning under the Municipal Corporation of Greater Mumbai. The sanctioned strength includes 231 posts of Mali-cum-Caretaker and 602 posts of Hamal. Out of these, 94 posts of Mali-cum-Caretaker and approximately 300 posts of Hamal are stated to be vacant. It is the case that during the period 1991-1992, the Education Officer issued tenurial appointment letters engaging respondent No.1 on daily wage basis to discharge duties as Mali-cum-Caretaker. A Circular dated 23 January 1992 was thereafter issued by the Education Officer recording that, by Office Order dated 14 December 1991, the Deputy Municipal Commissioner (Improvement) had delegated powers to the Administrative Officer (Schools) to make appointments of Mali-cum-Caretaker, Hamal and Sepoy on daily wage basis, along with prescribing the terms and conditions governing such appointments.

3. The respondents were engaged prior to 31 March 2002 as daily rated workers for carrying out duties such as maintenance of gardens, watering of plants, opening and closing of school premises and safeguarding of property. It is not in dispute that the nature of work so performed is of a regular and perennial character within the schools. In the year 2001, a demand was raised by the Municipal Mazdoor Union and other recognised

unions before the Municipal Commissioner seeking regularisation of such daily wage workers in view of existing vacancies. As the demand remained unresolved, the Union proposed to resort to strike action. In the year 2002, the Municipal Commissioner intervened, assured the recognised unions that the demand would be considered, and advised them to refrain from striking and to continue work. The respondents accordingly continued in service as daily rated workers up to the year 2002. Pursuant to deliberations held on 27 November 2002, the Corporation formulated a Scheme of Regularisation, commonly referred to as the Scheme of 2002. The said scheme was brought into effect by Circular No. PKA/1944/SC and contemplated continuation, regularisation and absorption of daily rated workers. The scheme provided that those workers who had completed 240 days of continuous service in a calendar year would be appointed on probation for two years, whereas those who had not completed 240 days would be appointed on probation for three years.

4. On 16 December 2002, the Education Officer directed the concerned department to collect requisite particulars of daily wage employees falling in both categories as contemplated under the Circular dated 27 November 2002. The department thereafter sought consent from the workmen in the year 2002 and forwarded the lists to the Education Officer for further action. In December 2002, the Chief Labour Officer of the Corporation prepared a common waiting list of daily wage workmen engaged between 1 July 1985 and 1 March 2002 who were eligible for consideration under the Scheme of 2002. It is further the case that on 1 July

2003, in view of the absence of concrete steps towards regularisation, the Additional Municipal Commissioner (WS) directed that Hamals and Mali-cum-Caretakers be absorbed on a preferential basis without imposing pre-conditions, and instructed the Joint Commissioner (GA) to prepare a detailed note. Subsequently, on 28 April 2006, orders were issued directing that 198 Mali-cum-Caretakers and 46 Hamals, who had worked for more than 30 days in a year, be absorbed against vacant posts in accordance with seniority. On 29 June 2007, the Additional Municipal Commissioner (ES) directed submission of a detailed report regarding daily wage workmen and completion of formalities for their absorption. It is further stated that between December 2003 and July 2007, approximately 8400 similarly situated daily wage employees in 70 departments of the Corporation, excluding the Education Department, were absorbed in terms of the policy dated 27 November 2002.

5. A series of meetings were held up to the year 2008 at various administrative levels concerning the issue of regularisation and absorption of the concerned workmen. However, by proposal dated 1 September 2008 and order dated 18 October 2008 passed by the Municipal Commissioner, it was decided that daily rated workmen could not be absorbed into permanent service of the Corporation in view of the law laid down by the Supreme Court in *State of Karnataka vs. Umadevi*. Thereafter, from the year 2009 onwards, the work earlier performed by Mali-cum-Caretakers and Hamals came to be outsourced to contractors, namely BVG, Crystal and another contractor.

6. Being aggrieved, 752 workmen challenged the aforesaid order dated 18 October 2008 as well as the outsourcing of work by filing Writ Petition No.585 of 2012, inter alia seeking implementation of the Scheme of 2002. By order dated 13 September 2012, this Court disposed of the petition by granting liberty to the concerned workmen to raise an industrial dispute before the appropriate Labour or Industrial Court.

7. Thereafter, on 15 October 2013, 27 workmen employed as Mali-cum-Caretaker and Hamal in the Education Department, out of the said 752 workmen, raised an industrial dispute claiming entitlement to salary benefits, annual increments and continuity of service from January 2003 onwards, along with absorption and regularisation in the services of the Corporation as Class IV employees. The said dispute came to be admitted in conciliation.

8. On 18 March 2014, the Deputy Commissioner of Labour, by order bearing No.812, referred the dispute raised by the respondents for adjudication to the Industrial Tribunal. The reference was registered as Reference (I.T.) No.10 of 2014. The respondents filed their statement of claim on 10 July 2014, and the petitioners filed their written statement on 27 November 2014. Oral evidence on behalf of both sides was thereafter recorded during the period from 7 January 2015 to 25 February 2015.

9. By Award dated 7 March 2015, the Industrial Tribunal allowed the reference and directed the Corporation to absorb on regular basis the 27 workmen named in Annexure-A to the order of reference from the date of the Award, along with payment of

wages and consequential benefits in accordance with applicable rules. The Corporation challenged the said Award by filing Writ Petition No.6548 of 2015. By order dated 21 October 2016, a learned Single Judge of this Court set aside the Award and remanded the matter for de novo consideration, granting liberty to the parties to adduce additional documentary and oral evidence.

**10.** Upon remand, the respondents filed an additional statement of claim on 20 January 2017, to which the petitioners filed an additional written statement. Thereafter, by the impugned Award dated 5 January 2019, the Industrial Tribunal held that the 27 workmen were entitled to absorption and regularisation with effect from January 2003 and further awarded lump sum compensation of Rs.10,00,000 to each of the workmen for the intervening period from 2003 to 2018. The said Award was published on 20 March 2019 and became enforceable on 20 April 2019 under Section 17 of the Industrial Disputes Act. Aggrieved thereby, the present writ petition has been instituted on 25 June 2019 challenging the said Award.

**11.** Mr. Bukhari, learned Senior Advocate appearing for the petitioners, submitted that the appropriate Government is empowered to make a reference under Section 10 of the Industrial Disputes Act, 1947 only when an industrial dispute exists or is apprehended between the parties. It was urged that, at the time when the reference came to be made, neither any industrial dispute existed nor was any such dispute apprehended. According to him, there was no subsisting employer–employee relationship between the parties. Reliance was placed on the judgment of the

Apex Court in *Oshiar Prasad v. Employees in relation to Management of Sudamih Coal Washery of M/s Bharat Coking Coal Ltd.*, (2015) 4 SCC 71, particularly paragraph 30, wherein it has been held that a reference for examining the issue of absorption, in the absence of a valid industrial dispute, is misconceived. Proceeding on the aforesaid submission, it is contended that the Industrial Tribunal lacked jurisdiction to adjudicate upon the issue of absorption and regularisation. It is submitted that the Tribunal could not have entered into the merits of the claim once the reference itself was not maintainable. The Award is, therefore, assailed as being illegal and contrary to the settled position of law. It is further urged that though Issue No.1 regarding maintainability was framed, the Tribunal has failed to consider the same in its proper perspective. It is pointed out that, admittedly, the respondent workmen were not in employment at the time of raising the dispute, a fact which also finds acceptance in paragraph 59 of the Award. Despite this, the Tribunal has, without adequate reasoning, held the reference to be maintainable. According to the petitioners, the Tribunal has ignored material evidence led by the Corporation and has also failed to apply the ratio of the judgment in *Oshiar Prasad*. This, it is submitted, demonstrates non-application of mind and constitutes a manifest error of law warranting interference.

**12.** It is further submitted that, as per the demand letter and statement of claim, the engagement of the respondents came to be discontinued at various points of time between 1991 and 2001. Reference is made to the chart produced on record indicating that

several respondents had worked for short durations ranging from 11 days to 88 days and were discontinued in different years such as 1995, 1997, 1998, 1999, 2000 and 2001. The reference, however, was made only on 18 March 2014. According to the petitioners, there is thus an inordinate delay ranging from 13 to 19 years in raising the dispute. It is submitted that none of the respondents were in service at the time of raising the dispute and no satisfactory explanation has been offered for such delay. The only justification noted by the Tribunal is that the workers and the Union were making representations from time to time. It is contended that mere correspondence cannot constitute a valid explanation for delay. It is further urged that the respondents did not challenge their discontinuation at any point of time, even after becoming aware in 2008 of the decision not to regularise workers who had not completed 240 days of service. In such circumstances, it is submitted that the Tribunal ought to have rejected the reference on the ground of delay and laches. It is also contended that the Industrial Tribunal has granted relief of reinstatement without framing any issue in that regard. According to the petitioners, neither was there any issue pertaining to illegal termination nor any issue regarding entitlement to reinstatement. The parties were, therefore, not put to notice that such relief was under consideration. Despite this, the Tribunal has, in clause (iii) of the Award, directed reinstatement of all 27 workmen. It is submitted that such a direction travels beyond the terms of reference, the pleadings and the issues framed, and is therefore unsustainable in law. It is further urged that the terms of reference

did not encompass any dispute relating to grant of lump sum compensation, back wages or monetary benefits for the alleged dispute period.

**13.** The petitioners submit that the workmen had neither pleaded nor specifically claimed any lump sum monetary compensation of Rs.10,00,000. The statement of claim does not disclose any quantified claim, nor was any evidence led to establish the basis or method of computation of such compensation. In absence of pleadings and proof, the Tribunal could not have granted such relief. By awarding a lump sum amount of Rs.10,00,000 to each workman, the Tribunal has, according to the petitioners, travelled beyond the scope of the reference and exercised jurisdiction not vested in it.

**14.** It is further submitted that the reference did not contain any demand concerning grant of pay scale or consequential benefits at par with permanent employees. Despite this, the Tribunal framed an issue and granted relief in that regard with effect from 2003, which is beyond the scope of the reference. It is contended that a policy decision taken by a competent authority continues to be binding unless set aside by a court of competent jurisdiction. The Industrial Tribunal, it is submitted, could not have ignored such policy decision in the absence of any challenge to its validity. In that context, it is urged that the decision of the Municipal Commissioner refusing regularisation to workers who had not completed 240 days of service governs the field. Consequently, Clause 3 of the Circular dated 27 November 2002 could not have been invoked in favour of such workers unless the said policy

decision was set aside. It is further submitted that the workmen were aware of the said policy decision at least by the year 2011, as is evident from the cross-examination of witness Pravin Ghag. Despite such knowledge, no steps were taken to challenge the said decision either in the present proceedings or otherwise. The demand was raised only in 2013 and the reference was made in 2014. This conduct, according to the petitioners, disentitles the respondents from claiming any relief.

**15.** The petitioners further contend that the Tribunal has failed to consider material evidence on record. It is pointed out that only limited portions of the affidavit of one witness, Govind Kulkarni, have been referred to, whereas the evidence of another witness, M. Kale, has not been considered at all. There is no discussion of his deposition in the Award, which, according to the petitioners, reflects non-consideration of relevant evidence. It is also submitted that even where certain portions of the cross-examination of witness Kale have been reproduced, the Tribunal has failed to consider the substantive evidence contained in the affidavits in examination-in-chief of both Kale and Kulkarni, particularly in relation to policy decisions, eligibility conditions and service particulars. The petitioners submit that the entire claim of the workmen was based on Clause 3 of the Circular dated 27 November 2002. Therefore, for establishing discrimination, it was necessary for the Tribunal to examine whether similarly situated employees had been regularised under the said clause.

**16.** In this regard, it is submitted that, as far as 83 employees of the Deonar Slaughter House are concerned, the record clearly

indicates that their regularisation was not under Clause 3 of the Circular of 2002, but pursuant to a separate policy decision dated 1 September 2007, which is also admitted in the statement of claim. It is, therefore, contended that none of the employees relied upon for comparison were regularised under Clause 3 of the Circular dated 2002. Most of them had either completed 240 days of service or were regularised under independent policy decisions.

**17.** It is further submitted that the said employees were working in different departments under different administrative and policy frameworks, and therefore, no parity could be claimed by the present workmen. The petitioners also challenge the reliance placed on documents marked as U-112. It is submitted that these documents were not proved in accordance with law, as they were not tendered through any competent witness. The witness Salvi has not referred to these documents in his evidence. The documents were produced after completion of evidence, at the stage of arguments, and their production was objected to by the petitioners. It is, therefore, contended that the said documents are inadmissible in evidence. It is further submitted that the Tribunal has relied upon document U-8, namely a letter dated 10 January 2005 and minutes of meeting dated 19 October 2005, to hold that 30 days of service is sufficient for regularisation under Clause 3 of the Circular dated 27 November 2002.

**18.** According to the petitioners, a plain reading of the said documents does not support such conclusion. There is no reference to Clause 3 of the Circular nor any indication that the requirement of 240 days was diluted or modified. On the contrary, it is

submitted that the minutes of the meeting clearly indicate that workers who had completed 30 days were only to be placed on a waiting list for engagement as daily wagers and not for regularisation. The Tribunal has, therefore, misconstrued the said documents. It is also pointed out that respondent No.1, in his evidence, has admitted that duties were assigned to him only in the absence of regular employees during their leave period. Similarly, another witness has admitted in cross-examination that he had worked only for short durations in different years and further admitted that permanency was granted only to those who had completed 240 days of continuous service. It is thus submitted that none of the respondents had completed 240 days of service in any calendar year. It is further contended that they were engaged on daily wages without issuance of appointment letters and had executed undertakings stating that they would not claim permanency and would work against leave vacancies. Having accepted such terms without protest, they are estopped from raising a claim for regularisation.

**19.** The petitioners further submit that the respondents were not appointed through any regular selection process. Evidence has been led to show that appointments in the Corporation are required to be made in accordance with prescribed rules and procedures, which were not followed in the present case. No advertisement was issued, no selection process was undertaken and no names were called from the Employment Exchange. It is, therefore, contended that the engagement of the respondents was de hors the constitutional scheme of public employment and they

cannot claim regularisation as a matter of right. Reliance is placed on the law laid down by the Apex Court in *State of Karnataka v. Umadevi*, 2006(4) SCC 1.

20. It is further submitted that the Circular dated 27 November 2002, having been issued by the Municipal Commissioner, could not be overridden by subordinate authorities. The Tribunal has misinterpreted the said Circular. It is also pointed out that the subsequent decision dated 4 October 2008 declining regularisation to those who had not completed 240 days has not been challenged by the respondents.

21. The petitioners further rely on the settled position of law that mere completion of 240 days does not confer any right to regularisation, much less in cases where the initial appointment is not in accordance with rules. Reliance is placed on the judgment in *M.P. Housing Board v. Manoj Srivastava*, 2006(2)SCC 702, wherein it has been held that completion of 240 days does not by itself create a right to permanency. It is also submitted that the regularisation of 83 labourers at the Deonar Slaughter House was pursuant to a one-time policy decision taken after considering the recommendations of the National Commission for Safai Karamcharis. The said employees were working under different conditions and for long periods and cannot be compared with the respondents. It is further contended that past instances of regularisation do not create any enforceable right in favour of others.

**22.** It is further submitted that the Circulars relied upon by the respondents stood superseded by the decision dated 18 October 2008 taken in view of the law laid down in *Umadevi*. Therefore, no right can be claimed on the basis of the Circular dated 27 November 2002, which in any event was applicable only to those in employment at the relevant time.

**23.** In rejoinder, Mr. Bukhari submitted that even the procedural aspects have not been complied with by the respondents. It is pointed out that not all workmen have signed the Vakalatnama, which fact has been admitted in cross-examination. Only two witnesses have been examined on behalf of 27 workmen. It is submitted that an authorised representative cannot depose on behalf of all workmen when their individual service particulars differ and are within their personal knowledge. Each workman was required to establish his own case. It is further submitted that the allegation regarding absorption of 8400 daily rated workers is not supported by any evidence. No records have been produced to substantiate the same. As regards the employees of Deonar Slaughter House, it is reiterated that their regularisation was pursuant to a separate policy decision. In the case of Bhujgonda, it is submitted, the facts were entirely different as the workman had completed 240 days of service and his services were terminated.

**24.** In light of the aforesaid submissions, it is contended that the impugned Award dated 5 January 2019 suffers from serious legal infirmities and is liable to be quashed and set aside in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India. It is, therefore, prayed that the writ petition be allowed and

the Rule be made absolute in terms of prayer clause (a).

**25.** Per contra, Mr. Naidu, learned Advocate appearing for the respondents, submitted that the objection regarding absence of signatures of all individual workmen on the Statement of Claim and the contention that all respondents did not lead evidence is an afterthought. It is pointed out that such a plea was neither taken in the original Written Statement nor in the additional Written Statement, and was also not urged in the earlier writ proceedings. It is submitted that absence of signatures of every workman is not fatal so long as the dispute has been properly espoused. Proceedings under the Industrial Disputes Act are required to be construed on the basis of substance rather than technical form. Reliance is placed on paragraph 34 of the petition, wherein the witness has categorically deposed that he was authorised to depose on behalf of all 26 workmen. It is further submitted that the said statement was not challenged by the Corporation at the relevant time, nor was any evidence led to show lack of authority.

**26.** It is further submitted that the delay in reference of the dispute is attributable to the conduct of the Corporation and not to the concerned workmen. It is urged that the recognised Union had raised an industrial dispute seeking regularisation of Khadabadli, casual and daily rated workers employed in various departments of the Corporation. In order to press the demand, the Union had proposed to resort to strike. However, the Municipal Commissioner intervened and assured consideration of the demand, thereby persuading the workmen not to proceed on strike. It is submitted that, on the basis of such assurance, the workmen continued in

service and negotiations were held between the Municipal Authorities and the Union. These negotiations culminated in formulation of a scheme for continuation, absorption, and regularisation of daily rated workers, embodied in Circular dated 27 November 2002. It is further submitted that the said Circular was issued under the authority of the Municipal Commissioner and is binding on the Corporation and its officers in view of Sections 54 and 64(3) of the Mumbai Municipal Corporation Act.

**27.** It is submitted that, in furtherance of the Scheme of 2002, subsequent circulars and communications were issued calling for details of daily rated workmen, including their service particulars. By Office Memorandum dated 20 April 2006, directions were issued to absorb certain categories of workers who had worked for more than 30 days in a year. Further directions were issued in 2007 calling for detailed reports and completion of formalities for absorption. It is contended that in the report so prepared, the respondents were shown as eligible for absorption and regularisation, which document has not been disclosed by the petitioners. It is further submitted that the Scheme of 2002 was implemented in respect of a large number of daily rated workers in other departments, numbering about 8400, who were continued and absorbed between 2003 and 2007, whereas similarly situated workers in the Education Department were denied such benefit.

**28.** It is further submitted that, in August 2007, 83 daily rated workers at the Deonar Slaughter House, including those who had worked for less than 240 days, were absorbed on the basis of the Scheme of 2002. It is pointed out that the Corporation's own

witness has admitted that several meetings were held between 2002 and 2008 regarding regularisation. It is further submitted that the Union continued to pursue the demand for absorption at various levels, including with elected representatives and ministers. The Corporation's witness has also admitted that meetings were proposed at higher levels in this regard. These facts, it is submitted, have been duly recorded by the Tribunal.

**29.** It is submitted that, in the absence of any response from the Corporation, 77 workmen, including the present respondents, approached this Court by filing Writ Petition No.585 of 2012 seeking implementation of the Scheme of 2002. By order dated 13 November 2012, this Court directed the workmen to raise an industrial dispute. Thereafter, the respondents raised a dispute in 2013 seeking reinstatement, continuity of service, wages, and regularisation. The conciliation proceedings failed, and a failure report was submitted under Section 12(5) of the Act. Consequently, by order dated 18 March 2014, the dispute was referred for adjudication. It is submitted that the Tribunal has considered these facts while dealing with the issue of delay and has returned a finding in favour of the respondents based on evidence on record.

**30.** It is further submitted that the reference made is composite in nature and encompasses two interconnected disputes, namely, discontinuation of service and the claim for absorption and regularisation. It is urged that both aspects fall within the jurisdiction of the Industrial Tribunal. It is contended that the primary dispute pertains to non-implementation of the Scheme of

2002, particularly Clauses 3 and 4 thereof. It is further submitted that a substantial number of workmen were in employment at the time of introduction of the scheme, and even the Corporation's witness has admitted the possibility of the respondents having worked after 1 January 2002.

**31.** It is submitted that both parts of the reference are interdependent. The issue of regularisation and absorption is linked with the question of continuity of service and entitlement to wages and benefits. It is urged that the Tribunal has considered both aspects and has granted relief after balancing equities. The Tribunal has declined full back wages, observing that it would not be appropriate to impose the entire financial burden on the Corporation, and has instead granted lump sum compensation while directing reinstatement and regularisation.

**32.** It is further submitted that once a reference is made by the competent authority, the Tribunal is bound to adjudicate the dispute on merits, subject to existence of jurisdictional facts. It is contended that the decision in *Oshiar Prasad* is distinguishable, as in that case the reference was limited only to regularisation without any issue regarding termination. In the present case, the reference specifically includes the issue of discontinuation of service, which empowers the Tribunal to examine the legality of such discontinuation and grant consequential relief.

**33.** It is further submitted that the Corporation's own evidence establishes that the Scheme of 2002 was implemented in respect of several categories of workers, including 8400 daily rated workers

in various departments, 83 workers at Deonar Slaughter House, and certain employees in the Education Department who were regularised pursuant to court orders. It is contended that these employees were similarly situated as the respondents.

**34.** It is also submitted that similarly situated employees such as R.P. Mishra, Bhujgonda Kamble and others were granted relief of reinstatement and regularisation pursuant to judicial orders, which have attained finality. It is urged that the respondents are identically placed and denial of similar treatment amounts to discrimination. The Tribunal has, on appreciation of evidence, recorded a finding of discrimination and arbitrariness in implementation of the Scheme of 2002, which violates Articles 14 and 16 of the Constitution.

**35.** It is further submitted that the law laid down by the Apex Court in subsequent decisions has clarified the position regarding regularisation of long-serving daily wage employees. Reliance is placed on the decision in *Shripal v. Nagar Nigam, Ghaziabad*, 2025 SCC OnLine SC 221, wherein it has been held that the State is under an obligation to act as a model employer and cannot deny regularisation to eligible employees by relying on its own inaction. It is submitted that where employees have worked for long periods against sanctioned posts, their appointments are irregular and not illegal, and they are entitled to consideration for regularisation.

**36.** Reliance is also placed on the decision in *Jaggo v. Union of India*, 2024 SCC OnLine SC 3826 wherein the Apex Court has held that continued engagement of workers for long periods establishes

the perennial nature of work and the State cannot deny regularisation by invoking the principle laid down in *Umadevi*. It is submitted that such denial would be arbitrary and unjust.

37. Further reliance is placed on the decision in *Dharam Singh v. State of U.P.*, 2025 INSC 998 wherein the Apex Court has deprecated the practice of continuing workers on daily wages for long periods and has held that the State cannot rely on financial constraints to deny regularisation. It is submitted that selective regularisation of some employees while denying the same to others similarly situated is violative of Article 14.

38. It is also submitted that in *Pawan Kumar v. Union of India*, 2026 INSC 156 the Apex Court has reiterated that similarly situated employees cannot be treated differently and that outsourcing of work indicates its perennial nature. It is urged that denial of regularisation in such circumstances amounts to discrimination and arbitrariness.

39. In light of the aforesaid submissions, it is contended that the writ petition is devoid of merit and not maintainable. It is submitted that the Award passed by the Industrial Tribunal is legal and justified and does not warrant interference in writ jurisdiction. The respondents, therefore, pray for dismissal of the petition with costs and for implementation of the Award.

#### **REASONS AND ANALYSIS:**

40. I have carefully considered the contentions of the parties and the material placed on record. I now proceed to examine this issue in some detail, so that the objection raised by the petitioners is

properly understood and answered.

**Maintainability of the Reference:**

41. On the question of maintainability of the reference, the petitioners have strongly argued that the reference itself was not maintainable. According to them, on the date when the reference was made, there was no existing relationship of employer and employee between the parties. They say that the workmen were already discontinued long back. Therefore, there was no industrial dispute in existence or even apprehended. On this basis, they rely upon the judgment in *Oshiar Prasad*, where the Supreme Court has held that if the workmen are already out of service and no dispute regarding termination is referred, then the Tribunal cannot go into the question of absorption. The Court in that case clearly observed that such a reference is misconceived.

42. In *Oshiar Prasad*, the dispute which was referred did not include the issue of termination at all. Because of that, the Court said that there was no existing relationship left, and therefore, no question of deciding absorption. Here, the workmen have not come before the Tribunal only asking for absorption in a vacuum. They have specifically raised a dispute that their services were discontinued and that such discontinuation was not proper. They have asked that they be taken back in service, with continuity from January 2003, and thereafter be regularised. This is a combined claim. It includes the issue of discontinuation as well as the issue of future service. I also find that the reference order dated 18 March 2014 clearly shows this position. It is not limited only to

absorption. It speaks about continuity of service from January 2003 and also about absorption and regularisation. This shows that the appropriate Government was aware of the full nature of the dispute and has referred both aspects together. So, I cannot read the reference in a restricted manner. In fact, when I read the reference as a whole, it appears to me that it is of a composite nature. One part of the dispute is whether the workmen were wrongly discontinued. The second part is whether, if that is so, they are entitled to be taken back and regularised. These two parts cannot be separated. They are connected. If discontinuation is found improper, then the question of reinstatement and regularisation naturally follows. Therefore, I am unable to accept the argument that there was no industrial dispute in existence. The workmen had already raised a dispute in the year 2013. They had demanded that they should be taken back with continuity and regularisation. This itself is sufficient to show existence of an industrial dispute. It is not necessary that the workmen must be physically in service at that moment. What is required is a dispute relating to employment or non-employment. Here, the dispute clearly relates to non-employment and its consequences.

**43.** I also cannot ignore that the dispute went through the process of conciliation and thereafter a failure report was submitted. Only then the reference was made. This itself shows that the machinery under the Industrial Disputes Act was properly followed. In these circumstances, I am of the view that the Tribunal did have jurisdiction to examine the dispute on merits. The objection raised by the petitioners that the reference was

misconceived does not hold good when the entire factual background is taken into account. Thus, I find that the reliance placed on *Oshiar Prasad* is misplaced in the facts of the present case. That judgment applies where the dispute is incomplete and does not include the question of termination. Here, the dispute is complete and covers both discontinuation and regularisation. For these reasons, I hold that the reference was maintainable, and the Tribunal was justified in proceeding to decide the same. The contention of the petitioners on this point is therefore rejected.

**Delay and laches:**

44. I now turn to the objection raised by the petitioners regarding delay and laches, which according to them goes to the root of the matter.

45. The petitioners have argued that the workmen have approached the machinery of law after long delay. According to them some of the workmen were last engaged somewhere in the 1990s and yet the dispute came to be raised only in the year 2013. They say that by that time many years had already passed, and therefore such stale claims ought not to have been entertained. It is further submitted that on the date when the dispute was raised, admittedly none of the workmen were in service. From this the petitioners argue that if the workmen really believed that their discontinuation or non-absorption was wrongful, they should have taken steps immediately and not waited for so many years. Delay in approaching a forum is always a matter of concern. Law does not assist a person who sleeps over his rights. But at the same time

I cannot look at delay, without examining the circumstances which led to such delay.

46. From the record, I find that the recognised Union had raised a demand for regularisation of daily rated workers as early as in the year 2001. This was raised through the Union representing the workers. It also appears that the Union had gone to the extent of proposing a strike to press this demand. This shows that the issue was actively pursued. At that stage, the Municipal Commissioner himself intervened and assured that the demand would be considered. Because of this assurance coming from the highest authority in the Corporation, the workers chose not to go on strike. In my view, the workers trusted the assurance given by the authority and did not take immediate steps. Therefore, it cannot be said that they were inactive at that stage. Thereafter, I find that discussions took place between the authorities and the Union. These were discussions involving officials and representatives of the workers. As a result of these discussions, the Scheme of 2002 came to be framed. This scheme was issued with approval of the Municipal Commissioner. This shows that the issue of regularisation was taken up at the higher level. Further I find that steps were actually taken to implement this scheme. Circulars were issued in the years 2004 and 2005 asking for details of daily wage workers. This indicates that the Corporation was collecting data for the purpose of implementation. In 2007, further directions were given to complete the process. All this shows that the scheme was being actively worked upon. It also comes on record that a large number of workers of about 8400 were absorbed in different

departments. This shows that the Corporation accepted the need for regularisation. However I find that the workers from the Education Department, including the present respondents, were not given the same benefit.

47. I also find that even after the year 2008, the matter did not come to an end in the way the petitioners are trying to suggest. On the contrary, the material on record shows that the issue of absorption of these workers continued to remain under consideration. From the evidence, it appears that meetings were still being held at different levels within the Corporation and also with higher authorities. They were part of a process where the question of regularisation and absorption was being discussed. This indicates that the Corporation had not treated the matter as concluded. I also find that the Union did not remain silent after 2008. The Union continued to take up the issue with various authorities. They approached not only officers of the Corporation, but also public representatives such as Municipal Councillors, Members of the Standing Committee, and even Ministers. This shows that the workers were making efforts at multiple levels to get their grievance addressed. They were trying to resolve the issue through available channels before resorting to litigation. Even the witness of the Corporation has admitted that such meetings were taking place. This admission shows that the Corporation was itself aware that the issue was under discussion. If the matter had been finally closed in 2008, there would have been no reason for such continued meetings and discussions. In my view, this conduct on the part of both sides shows that the issue did not become stale

after 2008. It was being pursued by the workers and was also being considered by the authorities. Therefore, I find that the argument of the petitioners that the respondents remained inactive after 2008 is not borne out from the record. The meetings, correspondence, and involvement of higher authorities show that the dispute was alive and was under consideration for a long period.

48. It further appears that when no final decision was taken, a group of 77 workers, including the present respondents, approached this Court in the year 2012. This step shows that when the process did not give results, the workers ultimately turned to the Court. This Court then directed them to raise an industrial dispute. It is thereafter that the present reference came to be made in 2014. So, the litigation process began only after the earlier efforts failed.

49. From this sequence of events, I find that the delay is not without explanation. It is not a case where the workers slept over their rights. The delay is connected with negotiations, assurances given by the authorities, and partial implementation of the scheme by the Corporation itself. Therefore, in my view, the explanation for delay is reasonable and acceptable in the facts of this case.

50. The Tribunal has considered this aspect in its Award and has come to the conclusion that the delay is attributable more to the inaction on the part of the Corporation rather than to any negligence of the workmen. I do not find this conclusion to be unreasonable. It is also necessary to remember that under the

Industrial Disputes Act, there is no fixed limitation period for raising a dispute. Of course, delay can still be a ground to refuse relief if it causes prejudice or if the claim becomes stale beyond justification. But that is a matter of facts in each case.

51. Taking all these factors together, I am not inclined to accept the submission of the petitioners that the claim is barred by laches. The delay in the present case is explained and does not appear to be so unreasonable as to defeat the claim. Therefore, I hold that the objection regarding delay and laches is not sufficient to non-suit the workmen. The Tribunal was justified in proceeding with the reference, and its finding on this aspect does not call for interference.

**Reliefs Beyond the Scope of Reference:**

52. I now deal with the next contention raised by the petitioners, which relates to the nature of relief granted by the Tribunal. The petitioners have argued that the Tribunal has granted relief which was never asked for by the workmen and was also not part of the reference. They have pointed out two specific aspects. First, that the Tribunal has directed reinstatement of all 27 workmen. Second, that it has awarded a lump sum amount of Rs.10,00,000 to each workman for the period from 2003 to 2018. According to them, both these directions are beyond the pleadings and beyond the reference, and therefore cannot be sustained.

53. I will examine both these objections separately. So far as the first objection regarding reinstatement is concerned, I do not find much substance in the argument of the petitioners. It is true that

no separate issue was framed in so many words regarding “illegal termination”. It is also true that the word “reinstatement” may not have been specifically used as an independent prayer. But I cannot read the pleadings and the reference in such a narrow and technical manner. When one look at the case of the workmen as a whole, I find that their main grievance was that they were discontinued and not taken back in service and that they should be given continuity from January 2003 and thereafter be regularised. This clearly shows that they were asking to be brought back into service. Continuity of service means that the break is ignored and the service is treated as continuing. Such a claim involves putting the workman back into service. The reference also uses the expression “continuity of service from January 2003” along with absorption and regularisation. These expressions cannot be separated. If continuity is to be granted the logical result is that the workman must be taken back. Otherwise the direction of continuity becomes meaningless. The Tribunal has used the expression “reinstated” or “taken back on work”. In my view this is nothing but giving effect to what was already claimed by the workmen. It is not a new or additional relief. It is the natural consequence of the claim for continuity and regularisation. Therefore, I am of the view that the direction of reinstatement does not travel beyond the scope of the reference. It remains within the framework of the dispute which was referred. The petitioners’ objection on this count cannot be accepted.

**54.** However, when I come to the second part regarding lump sum compensation, the position is different and requires closer

scrutiny. The petitioners have rightly pointed out that the workmen had not claimed any lump sum amount of Rs.10,00,000 in their statement of claim. What they had asked for was salary, benefits, increments and continuity from the year 2003, as if they were in service. In other words their claim was in the nature of back wages or consequential monetary benefits flowing from continuity. Instead of examining that claim and granting or refusing it on evidence the Tribunal has awarded a fixed amount of Rs.10,00,000 to each workman as compensation for the intervening period. I find that there is no clear basis for arriving at this figure. There is no discussion as to how this amount is calculated. There is no evidence showing loss of wages to that extent. There is also no pleading from the side of the workmen asking for such lump sum compensation.

**55.** In law, a Tribunal is required to decide the dispute which is referred to it. It cannot travel outside the pleadings and grant relief which was never asked for. Particularly in matters involving monetary claims, there must be some foundation. Either there must be a specific claim or there must be evidence on record to justify the amount. Here both are missing. The amount appears to have been fixed by the Tribunal on its own notion of fairness. While the intention may have been to balance equities such an approach cannot replace legal reasoning. A Tribunal cannot grant a large monetary amount merely because it feels it would be just. The respondents have tried to justify this by saying that the Tribunal was attempting to compensate the workers in place of full back wages. But even for that, there must be some basis. Without

pleadings and without evidence, such a direction cannot be sustained. Therefore I am inclined to agree with the petitioners on this aspect. The direction awarding Rs.10,00,000 to each workman is beyond the scope of the reference and is not supported by any legal foundation. To that extent, the Award suffers from error. In view of this I hold that while the Tribunal was justified in directing reinstatement and considering regularisation from 2003, it was not justified in awarding lump sum compensation in the manner it has done.

56. Accordingly the Award requires to be modified. The direction relating to lump sum compensation cannot be sustained and is liable to be set aside. The remaining part of the Award, insofar as it grants reinstatement and consequential service benefits in accordance with law, does not call for interference.

**Employer-Employee Relationship and 240-Day Rule:**

57. I now deal with the submissions advanced by learned Senior Counsel Mr. Bukhari on behalf of the petitioners. According to him it is not in dispute on record that all the 27 respondents were engaged only on daily wage basis and that too against leave vacancies. I find that this submission is supported by the material placed on record. The case of the petitioner is that whenever regular employees working as Gardener or Mali-cum-Caretaker were on leave or absent, temporary arrangements were made to ensure that the work of the schools did not suffer. For that limited purpose, persons like the respondents were engaged on daily wages under the Circular dated 23 January 1992. I further notice

that Respondent No.1, Mr. Pravin Ghag, in his evidence has clearly stated that he was given work only when regular employees were absent. This is a direct admission. Similarly the second witness examined on behalf of the respondents has also admitted in cross-examination that he worked only for few days in different years. He stated specific figures. Only 9 days in one year, 26 in another, 10 in another, and about 30 days in one year. These are not long periods. These are short and broken periods. He also admitted that permanency is given only when a person completes 240 days in a year. This admission is very important. It shows that even according to the respondents, completion of 240 days is necessary. I also find that except these two witnesses, no other respondent has come forward to give evidence. This is a weakness in their case. If 27 persons are claiming regularisation, then they were required to at least show their period of work by stepping in the witness box either personally or through coworker . That is not done. No individual details are proved. No records are produced through proper evidence. Therefore the claim remains unsupported.

**58.** From the material, I am satisfied that the engagement of the respondents was only during the leave period of regular employees. It was not continuous. It was only to fill temporary gaps. The Corporation runs many schools. In such setup, whenever one employee goes on leave, some arrangement has to be made. The respondents were used for that purpose. Even their own witness has admitted that they were working in different schools as per requirement. This shows that their engagement was need-

based and not regular. The chart produced by the petitioners further supports this position. It shows year-wise working days from 1993 to 2001. On looking at this chart, it becomes clear that the respondents have worked only for few days in a year. In some cases only 9 days. In some, 20 or 30 days. The respondents themselves have also filed their own chart. That also shows similar figures. There is no serious dispute about number of days worked. If I take examples from the record, one respondent worked for 9 days in a year. Another worked for 11 days. Another for 30 days. Some worked for 30 to 40 days spread over two or three years. These figures do not show continuous work. They show occasional engagement. Such kind of work cannot be treated as regular service. From this material, one conclusion clearly follows. None of the respondents has completed 240 days in any calendar year. There is no evidence to show that they have worked continuously.

**59.** It is also not disputed that the respondents were paid only daily wages. No appointment letters were issued to them. At the time of their engagement, they had executed what is called “Hami Patra”. This fact is also admitted in evidence. This document is important because it shows the understanding between the parties at the time of engagement. The Hami Patra clearly states that the respondents will not claim permanency and that they are being engaged only against leave vacancies. This means they were fully aware of the nature of their engagement. They accepted these conditions. They continued to work under those conditions. At that time, they did not raise any objection. In such situation, it is not open for them now to turn around and say that they should be

treated as permanent employees. When a person accepts a condition knowingly and works under it, then later he cannot claim something contrary to it. I also find that the engagement of the respondents was purely temporary. It was dependent on absence of regular employees. It had no element of permanency. The respondents knew this from the beginning. They accepted the terms. Therefore, their claim for regularisation cannot be accepted as a matter of right.

**60.** One more aspect requires to be noted. These facts and admissions, which are very important, have not been properly considered by the Industrial Tribunal. The Tribunal has not given due weight to the admissions of the respondents' own witnesses. It has also not properly examined the documentary material showing limited number of working days. This has affected the correctness of the Award. In my view, when such clear admissions are available on record, and when the evidence shows only intermittent engagement, the Tribunal ought to have taken a different view. The failure to consider these aspects makes the Award unsustainable.

**61.** The petitioner has strongly contended that the respondents were never appointed through any proper or lawful process. On careful reading of the record, this position appears correct. It is not disputed that no appointment letters were issued to any of the respondents for regular posts. There was no advertisement issued in newspapers. No names were called from the Employment Exchange. No interview, no written test, no medical examination was conducted. In other words, the normal process which is

required for public employment was not followed at all. The evidence of the respondents themselves supports this position. Respondent No.1 has clearly admitted in cross examination that no appointment orders were given. He also admitted that no interview was taken, no test was conducted, and no medical fitness was checked. These are basic requirements for entering public service. The respondents have also not pleaded anywhere that they were appointed through a lawful process. There is no such case made out before the Tribunal.

**Discrimination and Comparators:**

62. I now deal with the submission advanced on behalf of the respondents that several other daily rated workers were regularised under the Scheme of 2002 and, therefore, the present respondents are entitled to the same treatment. This argument is built on the claim that the Corporation has itself accepted and implemented the Scheme in many cases, and hence cannot deny the same benefit to the present set of workmen. The submission requires careful scrutiny, both on facts and in law.

63. It is pointed out by the respondents that a very large number of daily rated workers, around 8400, were continued and absorbed between the years 2003 to 2007. On this basis, the respondents argue that they stand on the same footing and that they have been left out without any proper reason. According to them, this amounts to unfair treatment. The figure of 8400, by itself, does not prove anything unless it is shown that those workers were similarly placed in all material respects. Firstly, there is no detailed

material before this Court to show the service conditions of those 8400 workers. It is not shown how many days they worked in a year. It is not shown whether they were continuously engaged or only intermittently like the present respondents. It is also not shown whether they had completed the required number of days or fulfilled eligibility conditions under the scheme. In absence of such details, the Court cannot assume that all those workers were identical to the present respondents. The respondents have also not produced any records of those workers to show similarity. A general statement that 8400 workers were regularised is not enough. It must be shown that both groups stand on same factual foundation. That exercise is completely missing here. Secondly, the record in the present case clearly shows that these respondents worked only for very few days in a year. Some worked for 9 days, some for 20 or 30 days. None has shown continuous service. This is a very important distinguishing factor. If other workers had worked continuously or had completed required days, then they cannot be compared with the present respondents who worked only occasionally. It must also be remembered that equality in law is not based on broad comparisons. It requires strict similarity. If two cases differ even in important aspects, then different treatment is permissible. Here, the respondents have failed to establish that they are similarly situated to those 8400 workers or other individuals. Therefore, the figure of 8400, though large, remains only a general statement without supporting details. It cannot be treated as a legal basis to grant relief. The Court cannot direct regularisation merely because others were regularised,

unless the respondents show that they satisfy the same conditions. That burden is not discharged. For these reasons, the argument based on large number of regularisations and alleged similarity does not sustain. It fails on lack of evidence and proper comparison.

64. I now consider the argument of the respondents on the ground of unequal treatment and discrimination, particularly their reliance on the case of 83 Safai Kamgars of Deonar Slaughter House. The respondents say that those workers were regularised even though some of them had not completed 240 days, and therefore similar benefit must be given to them. Firstly, the material on record clearly shows that the case of Safai Kamgars of Deonar Slaughter House stands on a completely different footing. Those workers were engaged in a very different kind of work. They were working in slaughter house conditions, doing heavy and continuous conservancy work, including cleaning, handling waste of animals, and maintaining hygiene in extremely difficult surroundings. It is also seen that many of them had worked for a long period, in some cases for 15 to 20 years. Their work was not occasional or intermittent. It was continuous and of a permanent nature. This is not the case with the present respondents. In contrast, the respondents before this Court were engaged only on daily wages and that too against leave vacancies. Their own evidence shows that they worked only for few days in a year. Some worked 9 days, some 20 or 30 days, and none has shown continuous engagement. Their work was not of a permanent nature. It depended entirely on absence of regular employees.

Therefore, both in nature of work and in duration of service, the two groups are clearly different. Hence, comparison itself is not proper. Secondly, the regularisation of the Safai Kamgars was not a general policy applicable to all workers. It was a one-time decision taken in special circumstances. It is on record that in the year 2006, the National Commission for Safai Karamcharis visited the Deonar Slaughter House. After examining the working conditions, the nature of duties, and the long years of service of those workers, the Commission made specific recommendations for their regularisation. Based on this, the Municipal Commissioner took a conscious decision to regularise them as a special measure. Therefore, this was an exceptional situation. It cannot be treated as a general rule applicable to all daily wage workers. There is also one more important aspect. The respondents were aware from the beginning that their engagement was purely temporary. They were appointed only in leave vacancies. They had also given undertaking that they would not claim permanency. Despite this, they now seek regularisation. Such a claim cannot be accepted, especially when they have not fulfilled the basic requirement of continuous service. Therefore, when the entire material is considered, it becomes clear that the reliance placed by the respondents on the case of Safai Kamgars of Deonar Slaughter House is misplaced. The two cases are not comparable. The respondents have failed to establish that they are similarly situated. In absence of such parity, the plea of discrimination must fail. Accordingly, this submission of the respondents on the ground of unequal treatment and discrimination is rejected.

65. Thirdly, as regards the workers like Ramdas Avalegaonkar, Rajendra Mohite and others, it is necessary to understand how their cases were decided. From the record, it appears that their regularisation was granted by specific orders passed by competent courts. In those proceedings, the Court must have examined their individual service details, their length of work, and other relevant facts. Only after such examination, relief was granted to them. Those orders have now become final. However, such judicial orders cannot be treated as blanket directions for all other workers. Each case depends on its own facts. Unless the present respondents are able to show that their facts are similar, they cannot claim benefit on that basis. In the present case, this essential step is missing. The respondents have not placed any material to show that they had similar length of service or continuity of work as those workers. There is no record showing that they worked for long periods without break. On the contrary, the material on record shows that they worked only for few days in a year. Therefore, the comparison itself fails. Without establishing similarity, reliance on those judgments does not help the respondents.

66. The same reasoning applies to the case of Santosh Gadekar and other individuals relied upon by the respondents. Their cases appear to have been decided either by specific court directions or by orders of competent authorities in special circumstances. These are individual cases. They are not general rules. They cannot be extended to all other workers as a matter of right.

67. It is also important to remember that the entire claim of the respondents is based on the Scheme of 2002. That Scheme itself contains certain conditions. It is not an open benefit for all. One of the basic requirements under the Scheme relates to length and continuity of service. A worker must show that he has worked for the required period. In the present case, this condition is not satisfied. There is no evidence to show that any of the respondents completed 240 days in any calendar year. This is not only clear from the documents on record, but also from the admissions made by their own witnesses.

68. In the present matter, the respondents have failed to produce any evidence of continuous service. Their engagement was clearly intermittent. It depended on leave vacancies. Their own witnesses have admitted that they worked only for limited days. These facts cannot be ignored. In absence of proof of continuous service, the claim for regularisation has no foundation. Therefore, the finding of the Industrial Tribunal that the Corporation has acted with favouritism or partiality cannot be accepted. That finding overlooks the clear differences in facts and ignores the lack of evidence on the part of the respondents. The conclusion is not supported by the material on record. For all these reasons, the submission that the respondents are entitled to regularisation on the ground of parity with other workers cannot be accepted. The respondents have failed to show that they are similarly situated or that they meet the required conditions under the Scheme. Hence, no relief can be granted on this ground.

**Scope of the 2002 Scheme and Government Policy:**

69. I now turn to the issue whether the decision taken in October 2008 satisfies the character of a policy decision and whether it overrides the earlier policy of 2002. On this point the submissions of the petitioner deserve acceptance. The record shows that the Scheme of 2002 was framed with a view to deal with daily rated workers who were then in service and who fulfilled the conditions stated therein. That scheme opened a window for consideration of certain categories of workers. But it was not a unchangeable decision for all times to come. It was an administrative arrangement meant to guide the Corporation in a particular situation. Such a scheme can always be examined again by the competent authority especially when the legal position changes or when the authority finds that the earlier arrangement cannot be continued in the same form.

70. In the present case, the Municipal Commissioner took a decision in October 2008 after considering the law declared by the Supreme Court in *Umadevi*. This is an important fact. The decision was taken by the authority who is competent to take policy decisions for the Corporation. The material on record shows that the Municipal Commissioner consciously decided that workers who had not completed 240 days of service would not be given permanency. This is a clear policy decision. A policy decision is not required to be in a particular form. What is material is the substance of the decision. If the competent authority after considering relevant facts and legal position decides how a class of workers is to be treated, that decision has the force of policy. Here

the October 2008 decision answers that description. It sets out the Corporation's stand on regularisation. It says that those who have not completed 240 days are not to be regularised. The reason is also stated. The reason is the law laid down in *Umadevi*. So the decision is not arbitrary. It is backed by legal principle.

71. It is also important that this 2008 decision was not challenged by the respondents. They knew about it. The evidence shows that they were aware of the stand taken by the Corporation. Yet they did not question that decision by filing any separate proceeding to set it aside. So the decision remained in force. A policy decision once taken by a competent authority and not challenged cannot be ignored by the Tribunal as if it never existed. It continues to bind the Corporation until it is set aside by lawful authority.

72. The respondents tried to rely on the Scheme of 2002 as if it gave them a continuing right. That submission cannot be accepted in the face of the later decision. When the 2008 policy was issued it clearly changed the field. The later policy was not only a repetition of the earlier one. It was a clear statement that persons who had not completed 240 days would not be granted permanency. That means the earlier scheme to the extent it suggested otherwise stood controlled by the later policy. The later decision being of the same competent authority and being based on the law then prevailing, overrides the earlier arrangement. The Tribunal appears to have treated the Scheme of 2002 as if it continued in full force without change. The Tribunal ought to have seen that the Corporation had by 2008 altered its policy

position. Once such change is shown the claim of the respondents cannot rest only on the old scheme. A person cannot insist on a benefit under an earlier policy when the competent authority has later decided to restrict that benefit in accordance with law. After that the 2008 policy removes any remaining doubt. It says in plain terms that workers without 240 days will not be regularised. Therefore the claim fails. For these reasons, I hold that the decision of October 2008 is a valid policy decision. It was taken by the competent authority. It was based on the law declared by the Supreme Court. It was not challenged by the respondents. It therefore operates with full force and overrides the earlier policy arrangement of 2002, to the extent the two are inconsistent. The respondents cannot claim regularisation by ignoring the later binding policy.

**73.** In view of the aforesaid discussion, when the entire material on record is considered as a whole, it becomes clear that the respondents have failed to establish the basic foundation of their claim. There is no reliable evidence to show that any of them completed 240 days of continuous service in any calendar year. Their engagement was admittedly intermittent, dependent upon leave vacancies, and not in accordance with any prescribed recruitment procedure. The reliance placed on the Scheme of 2002 and on alleged instances of parity is misplaced, particularly in light of the subsequent policy decision of 2008 which governs the field. The findings of the Industrial Tribunal, therefore, cannot be sustained as they overlook material admissions and evidence on record. The claim for regularisation and absorption, in absence of

proof of eligibility, cannot be granted. Accordingly, the petition deserves to be allowed and the impugned Award is liable to be set aside.

74. In view of the aforesaid discussion and reasons recorded hereinabove, I proceed to pass the following order:

- (i) The Writ Petition is allowed;
- (ii) The Judgment and Award dated 5 January 2019 passed by the Industrial Tribunal, Mumbai in Reference (I.T.) No. 10 of 2014 is hereby quashed and set aside;
- (iii) The Reference (I.T.) No. 10 of 2014 stands answered in the negative, and the claims made by the respondents for reinstatement, continuity of service, back wages, regularisation and absorption in service are rejected;
- (iv) It is, however, clarified that the respondents shall be at liberty to make an appropriate application before the Industrial Court under Section 17B of the Industrial Disputes Act, 1947. In the event, such an application is filed, the Industrial Court shall consider and decide the same on its own merits and in accordance with law without being influenced by any observations made in this judgment;
- (v) Rule is made absolute in the above terms;
- (vi) There shall be no order as to costs.

**(AMIT BORKAR, J.)**