

Gujarat High Court

Vice Chancellor vs Amulaben Narendrabhai Nimavat on 17 April, 2023

Bench: Hasmukh D. Suthar

C/LPA/461/2023

JUDGMENT DATED: 17/04/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 461 of 2023

In R/SPECIAL CIVIL APPLICATION NO. 8816 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

Sd/-

and

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Sd/-

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|---|---|----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?  | NO |
| 2 | To be referred to the Reporter or not ?   | NO |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?   | NO |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | NO |
- =====

VICE CHANCELLOR

Versus

AMULABEN NARENDRABHAI NIMAVAT & 2 other(s)

Appearance:

MR RUTVIJ OZA with MR MITRAJEET S SHUKLA(10827) for the

Appellant(s) No. 1

for the Respondent(s) No. 3

MR KURVEN DESAI, AGP for the Respondent(s) No. 2

MR CHINTAN N DESAI(9940) for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

and

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 17/04/2023

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI) C/LPA/461/2023 JUDGMENT  
DATED: 17/04/2023

1. This appeal is filed under clause 15 of the Latest Patent against the order dated 5.7.2022 rendered by the learned Single Judge in Special Civil Application No.8816 of 2020 partly allowing the petition filed by the private respondent - original petitioner.

2. Heard learned advocate Mr Rutviz Oza assisted by learned advocate Mr.Mitrajeet Shukla for the appellant, learned advocate Mr.Chintan Desai for the respondent no.1 - original petitioner and learned AGP Mr.Kurven Desai for the respondents nos.2 and

3.

3. Learned advocate Mr.Oza appearing for the appellant submitted that the original petitioner was appointed as Kitchen Worker/ Kitchen Aaya by the original respondent no.3, i.e. the present appellant, on 7.9.1994. Her services came to be terminated on 30.11.2002. It is alleged by the original petitioner that her services were terminated without following the due procedure and, therefore, she raised an industrial dispute, which was referred to the concerned Labour Court and registered as Reference (LCJ) No.13 of 2005 before the Labour Court, Jamnagar. It is submitted that the Labour Court, Jamnagar, passed an award on 29.6.2013, whereby the Labour Court partly allowed the reference and directed the present appellant to reinstate the petitioner on her original post with continuity in service, however, without back wages.

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4. It is submitted, at this stage, that the petitioner filed the captioned petition before this Court, wherein the petitioner has prayed for the following reliefs :

"(A) This Hon'ble Court may be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction to respondents to consider the case of the petitioner herein for regularization of service on the post on which the petitioner is working and further be pleased to direct the present respondents to pay all the benefits including the benefits of pay scale and other incidental benefits at par with the permanent employees of the Gujarat Ayurvedic University;

(B) Pending hearing and final hearing of this petition, Your Lordships may kindly be pleased to direct the present respondent No.3 to not to change the service conditions of the present petitioner.

(C) This Hon'ble Court may kindly be pleased to pass such other and further order which deems to fit, just and proper in the interest of justice."

5. It is submitted that the learned Single Judge party allowed the said petition and thereby did not grant the relief prayed for by the petitioner for regularization, however, the learned Single Judge directed the present appellant to pay to the petitioner salary in the minimum of the pay scale as paid to the regularly appointed employees on the post of Kitchen Worker/ Kitchen Aaya.

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6. Being aggrieved and dissatisfied with the order passed by the learned Single Judge, the appellant has preferred the present appeal.

7. Learned advocate Mr.Oza has assailed the impugned order passed by the learned Single Judge mainly on the ground that on one hand the learned Single Judge has not entertained the petition filed by the petitioner with regard to the relief prayed for by the petitioner for regularization of service, and on the other hand, learned Single Judge has issued impugned direction to pay salary in the minimum of the pay scale. It is further submitted that the learned Single Judge has observed that the petitioner shall also be entitled to other emoluments like D.A., etc. as has been paid to the regularly appointed employees. Learned advocate, therefore, urged that the impugned direction issued by the learned Single Judge be quashed and set-aside. Learned advocate Mr.Oza, at this stage, would submit that it was the case of the present appellant before the learned Single Judge that the original petitioner was not appointed after following the due procedure as per the recruitment rules and she was not qualified as per the requirement rules. It is further submitted that the original petitioner has not been appointed on the post in the prescribed setup. Learned advocate further submitted that the Central Government, Ministry of Law and Justice, while issuing the notification, enacted the Institute of Teaching and Research in Ayurveda Act, 2020 (for short, 'ITRA' Act). A copy of the said Act is placed at page Z-15 of the compilation. It is C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 further submitted that though the petition was filed prior to the enactment of the Act 2020, during the pendency of the said petition, the petitioner did not join the said authority as party respondent. Mr.Oza submitted that even the original petitioner was aware about the aforesaid aspect but she has not pointed out the same. In spite of that, the impugned direction has been issued by the learned Single Judge to the present appellant. It is submitted that the ITRA is a necessary and proper as well as affected party to the proceeding and, therefore, on this ground the order passed by the learned Single Judge be set-aside.

8. On the other hand, learned advocate Mr.Chintan Desai opposed this appeal and referred to the reasoning recorded by the learned Single Judge. It is submitted that the learned Single Judge has, though not entertained the prayer with regard to the request made by the petitioner for regularization of service, yet while placing reliance upon the decision rendered by the Hon'ble Supreme Court in the case of State of Punjab versus Jagjit Singh and others, reported in (2017) 1 SCC 148, has rightly issued the direction to the present appellant. Learned advocate, at this stage, has also placed on record a decision rendered by a Division Bench of this Court in the case of Mahuva Municipality versus Maheshbhai Jinabhai Sarvaiya passed in the LPA No.1036 of 2016. Learned advocate has more particularly referred to and relied upon paragraphs nos.11 to 13 of the said decision. Learned advocate urged that when the learned Single Judge has not committed any error while partly allowing the captioned petition, this Court may not entertain the present appeal.

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9. We have considered the submissions canvassed by the learned advocates. We have also perused the materials placed on record. It is not in dispute that the original petitioner was appointed as Kitchen Worker/ Kitchen Aaya on 7.9.1994 and her services came to be terminated on 30.11.2002. The dispute was referred to the Labour Court and the Labour Court passed an award on 29.6.2013, whereby the Labour Court partly allowed the reference of the petitioner and a direction was issued to the present appellant to reinstate the petitioner on her original post with continuity in service. It is also not in dispute that the petitioner is working on the post in question since last 26 years. It is a specific case of the original petitioner that she was doing the same work as was being done by the other permanent employees. Further, it was her specific case that she was selected by way of regular selection process and she possesses the requisite qualification for appointment on the post in question. It is true that looking to the facts of the present case the learned Single Judge has not entertained the prayer made by the petitioner with regard to regularization of service and liberty is granted to the petitioner to file appropriate proceedings before the appropriate forum. It is relevant to note that the learned Single Judge has considered the nature of the work carried out by the petitioner as well as the other similarly situated employees working with the appellant and the learned Single Judge, after placing reliance upon the decision rendered by the Hon'ble Supreme Court in the case of Jagjit Singh (supra) issued the impugned direction. In the case of Jagjit Singh (supra), the C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 Hon'ble Supreme Court has held in paragraphs nos.44, 45, 54, 55 and 58 as under :

"44. We shall first outline the conclusions drawn in cases where a claim for pay parity, raised at the hands of the concerned temporary employees, was accepted by this Court, by applying the principle of 'equal pay for equal work', with reference to regular employees:-

(i) In the Dhirendra Chamoli, this Court examined a claim for pay parity raised by temporary employees, for wages equal to those being disbursed to regular employees. The prayer was accepted. The action of not paying the same wage, despite the work being the same, was considered as violative of Article 14 of the Constitution. It was held, that the action amounted to exploitation - in a welfare state committed to a socialist pattern of society.

(ii) In the Surinder Singh, this Court held, that the right of equal wages claimed by temporary employees emerged, inter alia, from Article 39 of the Constitution. The principle of 'equal pay for equal work' was again applied, where the subject employee had been appointed on temporary basis, and the reference employee was borne on the permanent establishment. The temporary employee was held entitled to wages drawn by an employee on the regular establishment. In this judgment, this Court also took note of the fact, that the above proposition was affirmed by a Constitution Bench of this Court, in the D.S. Nakara.

(iii) In the Bhagwan Dass, this Court recorded, that in a claim for equal wages, the duration for which an employee would remain (or had remained) engaged, would not make any difference. So also, the manner of selection and appointment would make no difference.

And therefore, whether the selection was made on the basis of open competition or was limited to a cluster of villages, was considered inconsequential, insofar as C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 the applicability of the principle is concerned. And likewise, whether the appointment was for a fixed limited duration (six months, or one year), or for an unlimited duration, was also considered inconsequential, insofar as the applicability of the principle of 'equal pay for equal work' is concerned. It was held, that the claim for equal wages would be sustainable, where an employee is required to discharge similar duties and responsibilities as regular employees, and the concerned employee possesses the qualifications prescribed for the post. In the above case, this Court rejected the contention advanced on behalf of the Government, that the plea of equal wages by the employees in question, was not sustainable because the concerned employees were engaged in a temporary scheme, and against posts which were sanctioned on a year to year basis.

(iv) In the Daily Rated Casual Labour Employed under P&T Department through Bhartiya Dak Tar Mazdoor Manch, this Court held, that under principle flowing from Article 38(2) of the Constitution, Government could not deny a temporary employee, at least the minimum wage being paid to an employee in the corresponding regular cadre, alongwith dearness allowance and additional dearness allowance, as well as, all the other benefits which were being extended to casual workers. It was also held, that the classification of workers (as unskilled, semi-skilled and skilled), doing the same work, into different categories, for payment of wages at different rates, was not tenable. It was also held, that such an act of an employer, would amount to exploitation. And further that, the same would be arbitrary and discriminatory, and therefore, violative of Articles 14 and 16 of the Constitution.

(v) In State of Punjab v. Devinder Singh, this Court held, that daily- wagers were entitled to be placed in the minimum of the pay-scale of regular employees, working against the same post. The above direction was issued after accepting, that the concerned C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 employees, were doing the same work as regular incumbents holding the same post, by applying the principle of 'equal pay for equal work'.

(vi) In the Secretary, State of Karnataka, a Constitution Bench of this Court, set aside the judgment of the High Court, and directed that daily- wagers be paid salary equal to the lowest grade of salary and allowances being paid to regular employees. Importantly, in this case, this Court made a very important distinction between pay parity and regularization. It was held that the concept of equality would not be applicable to issues of absorption/regularization. But, the concept was held as applicable, and was indeed applied, to the issue of pay parity - if the work component was the same. The judgment rendered by the High Court, was modified by this Court, and the concerned

daily-wage employees were directed to be paid wages, equal to the salary at the lowest grade of the concerned cadre.

(vii) In State of Haryana v. Charanjit Singh, a three- Judge bench of this Court held, that the decisions rendered by this Court in State of Haryana v. Jasmer Singh, State of Haryana v. Tilak Raj, the Orissa University of Agriculture & Technology, and Government of W.B. v. Tarun K. Roy, laid down the correct law. Thereupon, this Court declared, that if the concerned daily-wage employees could establish, that they were performing equal work of equal quality, and all other relevant factors were fulfilled, a direction by a Court to pay such employees equal wages (from the date of filing the writ petition), would be justified.

(viii) In State of U.P. v. Putti Lal, based on decisions in several cases (wherein the principle of 'equal pay for equal work' had been invoked), it was held, that a daily-wager discharging similar duties, as those engaged on regular basis, would be entitled to draw his wages at the minimum of the pay-scale (drawn by his counterpart, appointed on regular basis), but C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 would not be entitled to any other allowances or increments.

(ix) In the Uttar Pradesh Land Development Corporation case<sup>33</sup> this Court noticed, that the respondents were employed on contract basis, on a consolidated salary. But, because they were actually appointed to perform the work of the post of Assistant Engineer, this Court directed the employer to pay the respondents wages, in the minimum of the pay-scales ascribed for the post of Assistant Engineer.

45. We shall now attempt an analysis of the judgments, wherein this Court declined to grant the benefit of 'equal pay for equal work' to temporary employees, in a claim for pay parity with regular employees:-

(i) In the Harbans Lal case, daily-rate employees were denied the claimed benefit, under the principle of 'equal pay for equal work', because they could not establish, that the duties and responsibilities of the post(s) held by them, were similar/equivalent to those of the reference posts, under the State Government.

(ii) In the Grih Kalyan Kendra Workers' Union case, ad-hoc employees engaged in the Kendras, were denied pay parity with regular employees working under the New Delhi Municipal Committee, or the Delhi Administration, or the Union of India, because of the finding returned in the report submitted by a former Chief Justice of India, that duties and responsibilities discharged by employees holding the reference posts, were not comparable with the posts held by members of the petitioner union.

(iii) In State of Haryana v. Tilak Raj, this Court took a slightly different course, while determining a claim for pay parity, raised by daily- wagers (- the respondents). It was concluded, that daily-wagers C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 held no post, and as such, could not be equated with regular employees who held regular posts. But herein also, no material was placed on record, to establish that the nature of duties performed by the daily- wagers, was comparable with

those discharged by regular employees. Be that as it may, it was directed, that the State should prescribe minimum wages for such workers, and they should be paid accordingly.

(iv) In *State of Punjab v. Surjit Singh*, this Court held, that for the applicability of the principle of 'equal pay for equal work', the respondents who were daily- wagers, had to establish through strict pleadings and proof, that they were discharging similar duties and responsibilities, as were assigned to regular employees. Since they had not done so, the matter was remanded back to the High Court, for a re-

determination on the above position. It is therefore obvious, that this Court had accepted, that where duties, responsibilities and functions were shown to be similar, the principle of 'equal pay for equal work' would be applicable, even to temporary employees (otherwise the order of remand, would be meaningless, and an exercise in futility).

(vi) It is, therefore apparent, that in all matters where this Court did not extend the benefit of 'equal pay for equal work' to temporary employees, it was because the employees could not establish, that they were rendering similar duties and responsibilities, as were being discharged by regular employees, holding corresponding posts.

54. There is no room for any doubt, that the principle of 'equal pay for equal work' has emerged from an interpretation of different provisions of the Constitution. The principle has been expounded through a large number of judgments rendered by this Court, and constitutes law declared by this Court. The same is binding on all the courts in India, under Article 141 of the Constitution of India. The parameters of the principle, have been summarized by us in C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 paragraph 42 herein above. The principle of 'equal pay for equal work' has also been extended to temporary employees (differently described as work-charge, daily-wage, casual, ad-hoc, contractual, and the like). The legal position, relating to temporary employees, has been summarized by us, in paragraph 44 hereinabove. The above legal position which has been repeatedly declared, is being reiterated by us, yet again.

55. In our considered view, it is fallacious to determine artificial parameters to deny fruits of labour. An employee engaged for the same work, cannot be paid less than another, who performs the same duties and responsibilities. Certainly not, in a welfare state. Such an action besides being demeaning, strikes at the very foundation of human dignity. Any one, who is compelled to work at a lesser wage, does not do so voluntarily. He does so, to provide food and shelter to his family, at the cost of his self respect and dignity, at the cost of his self worth, and at the cost of his integrity. For he knows, that his dependents would suffer immensely, if he does not accept the lesser wage. Any act, of paying less wages, as compared to others similarly situate, constitutes an act of exploitative enslavement, emerging out of a domineering position. Undoubtedly, the action is oppressive, suppressive and coercive, as it compels involuntary subjugation.

57. Having traversed the legal parameters with reference to the application of the principle of 'equal pay for equal work', in relation to temporary employees (daily-wage employees, ad-hoc appointees, employees appointed on casual basis, contractual employees and the like), the sole factor that

requires our determination is, whether the concerned employees (before this Court), were rendering similar duties and responsibilities, as were being discharged by regular employees, holding the same/corresponding posts. This exercise would require the application of the parameters of the principle of 'equal pay for equal work' summarized by us in paragraph 42 above. However, insofar as the instant aspect of the matter is concerned, it is not difficult for us to record the factual position. We say so, because it was fairly acknowledged by C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 the learned counsel representing the State of Punjab, that all the temporary employees in the present bunch of appeals, were appointed against posts which were also available in the regular cadre/establishment. It was also accepted, that during the course of their employment, the concerned temporary employees were being randomly deputed to discharge duties and responsibilities, which at some point in time, were assigned to regular employees. Likewise, regular employees holding substantive posts, were also posted to discharge the same work, which was assigned to temporary employees, from time to time. There is, therefore, no room for any doubt, that the duties and responsibilities discharged by the temporary employees in the present set of appeals, were the same as were being discharged by regular employees. It is not the case of the appellants, that the respondent-employees did not possess the qualifications prescribed for appointment on regular basis. Furthermore, it is not the case of the State, that any of the temporary employees would not be entitled to pay parity, on any of the principles summarized by us in paragraph 42 herein above. There can be no doubt, that the principle of 'equal pay for equal work' would be applicable to all the concerned temporary employees, so as to vest in them the right to claim wages, at par with the minimum of the pay-scale of regularly engaged Government employees, holding the same post.

58. In view of the position expressed by us in the foregoing paragraph, we have no hesitation in holding, that all the concerned temporary employees, in the present bunch of cases, would be entitled to draw wages at the minimum of the pay-scale (at the lowest grade, in the regular pay-scale), extended to regular employees, holding the same post."

10. The Division Bench of this Court in the case of Mahuva Municipality (supra) has observed in paragraphs nos. 11, 12 and 13 as under :

"11. Considering this, the Hon'ble Supreme Court observed that in the judgment of Umadevi, the Court had made very C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 important distinction between pay parity and regularization. It was held that the concept of equality would not be applicable to issues of absorption/regularization but the concept was held as applicable and was indeed applied to the issue of pay parity. After considering various judgments of the Hon'ble Supreme Court on this issue, the Hon'ble Supreme Court held as under:

"49 We have given our thoughtful consideration to the observations recorded by this Court, as were relied upon by the full bench (- as also, by the learned counsel representing the State of Punjab). It is not possible for us to concur with the inference drawn by the full bench, for the reasons recorded hereunder:-



49.1 We are of the considered view, that in paragraph 44 extracted above, the Constitution Bench clearly distinguished the issues of pay parity, and regularization in service. It was held, that on the issue of pay parity, the concept of 'equality' would be applicable (as had indeed been applied by the Court, in various decisions), but the principle of 'equality' could not be invoked for absorbing temporary employees in Government service, or for making temporary employees regular/permanent. All the observations made in the above extracted paragraphs, relate to the subject of regularization/permanence, and not, to the principle of 'equal pay for equal work'. As we have already noticed above, the Constitution Bench unambiguously held, that on the issue of pay parity, the High Court ought to have directed, that the daily-wage workers be paid wages equal to the salary, at the lowest grade of their cadre. This deficiency was made good, by making such a direction.

49.2 Insofar as paragraph 48 extracted above is concerned, all that needs to be stated is, that they were merely submissions of learned counsel, and not conclusions drawn by this Court. Therefore, nothing further needs to be stated, with reference to paragraph 48.

C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 49.3 We are therefore of the view, that the High Court seriously erred in interpreting the judgment rendered by this Court in the Secretary, State of Karnataka case, by placing reliance on paragraphs 44 and 48 extracted above, for drawing its inferences with reference to the subject of pay parity. On the above subject/issue, this Court's conclusions were recorded in paragraph 55 (extracted in paragraph 36, herein above), which have already been dealt with by us in an earlier part of this judgment."

11.1 The Hon'ble Supreme Court, therefore for the reasons stated in the aforesaid judgment in the case of Jagjitsingh & Ors., (supra) was of the view that the claim of the temporary employees for minimum wages on par with regularly engaged government employees cannot be declined. Final directions were issued by the Hon'ble Supreme Court in paragraph 61 of the judgment holding that they had no hesitation that all temporary employees concerned would be entitled to draw wages minimum to the pay-scale at the lowest in the regular pay-scale extended to regular employees holding the same post.

12. In view of the above, the direction given by the Industrial Tribunal with respect to the respondents to be given the benefit of regularisation and permanency under the Municipality and so confirmed by the learned Single Judge is hereby quashed and set aside. However, in accordance with the law laid down in the case of Jagjitsingh & Ors., (supra), we are of the opinion and so hold that the respondents herein who are working as Clerks/Class-IV employees are entitled to the minimum pay-scale (along with Dearness Allowance as revised from time to time) as is available to the regular employees holding the same post. In other words, those respondents herein who are discharging their duties in the cadre of Clerks shall be entitled to draw wages at par with the minimum of the regular pay-scale of Rs.3,050-4,590/- from the date of the award i.e. 04.07.2015. Those respondents who are engaged on the posts of Class-IV shall also be extended such benefit of wages at par with minimum of the regular pay-scale revised C/LPA/461/2023 JUDGMENT DATED:

17/04/2023 from time to time on the same lines as being given to a regular Class-IV employees from the date of award i.e. 04.07.2015. The appellant Municipality is directed to extend the benefit of the granting wages at par with the minimum of the pay-scale revised from time to time to the respondents herein together with arrears from the date of award.

13. Taking into consideration the fact that it has come on record that the respondents are working with the Municipality for more than two decades and that the establishment containing various clerical posts and other cadres was sanctioned as early as in the year 1973 and in view of divergent activities in the field of public services and considering the administrative set up as on date it will be open for the municipality to forward a proposal to the competent authority by providing details about requirement of personnel in various departments of the municipality. As and when such set up is approved by the competent authority, claim of respondents - employees based on their experience and qualification together can be considered for their claim towards permanency in regular set up of municipality keeping in mind the seniority of other employees also. The order impugned passed by the learned Single Judge is modified accordingly. The appeals are partly allowed with the aforesaid directions."

11. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court as well as the Division Bench of this Court, if the facts of the present case are carefully examined, we are of the view that the learned Single Judge has rightly applied the principle of 'equal pay for equal work', thereby issuing direction to the present appellant to pay to the respondent no.1 - original petitioner the salary in the minimum of the pay scale as paid to the regularly appointed employees on the post of Kitchen Worker/ Kitchen Aaya. Learned Single Judge, while issuing the said direction, has specifically clarified that for the period C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 between the date of termination of the petitioner, i.e. 24.2.2003, till the date of reinstatement, i.e. 13.12.2013, the petitioner will not be entitled for the difference of salary actually paid and the salary payable as per the minimum of pay scale.

12. With regard to the next contention raised by the learned advocate Mr.Oza appearing for the appellant, it is pertinent to note that after the Act of 2020 came to be enacted in September 2020, the concerned Superintendent (In-charge) working under the appellant has filed an affidavit before this Court on 11.12.2020, a copy of which is placed at page 88 of the compilation. In the said affidavit, the deponent has not pointed out the aspect that the services of the original petitioner are transferred to the ITRA. Even during the course of hearing of the captioned petition before the learned Single Judge, the said contention was not taken by the appellant before the learned Single Judge. During the course of argument of the present appeal, learned advocate Mr.Oza has fairly submitted that the present appellant had filed a review application before the learned Single Judge, however, the said review application has been withdrawn. Thus, we are of the view that the aforesaid contention is also misconceived and it was, in fact, the duty of the present appellant to point out the relevant aspect to the learned Single Judge. We are not impressed by the said contention. It is relevant to note that when the responsible officer like the Superintendent (In-charge) of the appellant has filed the affidavit, it was incumbent upon the officer to point out the correct aspect before the Court, however, now at this belated stage, such type of contention is taken. It is further relevant to C/LPA/461/2023 JUDGMENT DATED: 17/04/2023 note that when the petitioner had

filed the petition, the aforesaid ITRA Act was not enacted by the Parliament, however, when the affidavit came to be filed by the Superintendent (In-charge) of the appellant on 11.12.2020, the said Act was enacted. In spite of that, he has not pointed out this aspect before the learned Single Judge and now at this belated stage when the learned Single Judge issued a direction, such type of contention is taken. Therefore, we are not impressed by the said contention.

13. We have also gone through the reasoning recorded by the learned Single Judge while giving the impugned direction and we are of the view that the learned Single Judge has not committed any error while issuing the said direction and, therefore, no interference is required in the present appeal. Therefore, the appeal is dismissed in limine.

(VIPUL M. PANCHOLI, J.) (HASMUKH D. SUTHAR, J.) /MOINUDDIN