

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 5289 of 2019**  
**With**  
**CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021**  
**In R/SPECIAL CIVIL APPLICATION NO. 5289 of 2019**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 19578 of 2021**

**FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BIREN VAISHNAV** sd/-

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

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**KABINDRA SATYANARAYAN SINGH**

Versus

**STATE OF GUJARAT THRU THE ADDL. CHIEF SECRETARY**

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Appearance:

MR VAIBHAV A VYAS(2896) for the Petitioners

MR KURVEN DESAI, ASST GOVERNMENT PLEADER IN SCA NO. 5289 OF 2019 WITH CIVIL APPLICATION NO. 1 OF 2021 AND MS SURBHI BHATI, AGP IN SCA NO. 19578 OF 2021 for the Respondent(s) No.

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**CORAM:HONOURABLE MR. JUSTICE BIREN VAISHNAV****Date : 08/03/2022****CAV JUDGMENT**

1. Heard Mr. Vaibhav Vyas, learned advocate for petitioners of

Special Civil Application No. 5289 of 2019 and Mr. Nabil Bloch, learned advocate for the petitioner of Special Civil Application No.19578 of 2021.

2. In both these petitions, under Article 226 of the Constitution of India, the petitioners working on a contractual basis as crew members of the boats procured for the purpose of coastal security of Gujarat are claiming the benefits of regularization and praying for consequential benefits including pay-scale and allowances.

3. Facts as indicated in Special Civil Application No.5289 of 2019 shall be discussed.

3.1 The case of the petitioners is that the petitioners had been appointed initially on a contractual basis for a period of eleven months as crew members of the boats operating on the coastal zone of the State of Gujarat. Their appointments are either as Master, Syrang or Engine Driver and Oilmen-cum-cleaner as the case may be.

3.2 Mr. Vaibhav Vyas, learned counsel for the petitioners would submit that their contractual appointments have been renewed from time to time at regular intervals. He would submit that the petitioners have

joined the service of the respondent authorities after a specific training that they have undertaken and after having undergone a regular selection process. The petitioners are employed as crew members of the interceptor boats. They are working round the clock even at odd hours and contributing their best by protecting the State from the potent threat that a coastal zone shall face.

3.3 Mr.Vyas, learned advocate would submit that the State of Gujarat with approximately 1640 km of coastline has 12 major ports and 41 minor ports on the coastline. Taking into consideration such huge strategic importance and vastness of coastline of the State, coastal security assumes the most important aspect. In promoting the Coastal Security Scheme, in the first phase the State was given 30 interceptor boats to patrol coastal areas of the State and to man these boats which require one Master, one Syrang one Engine Driver and one Oil Man, persons with professional license were to be engaged. The State had recruited Ex-Navy/ Ex-Coast Guard Personnel plus those persons who possess the requisite technical qualification and working in the private sector. He submitted that when they were recruited, a promise was held out that when the regular recruitment would take place they will be absorbed and appointed as regular employees. For the present, the petitioners as contractual employees are engaged on meager salaries

whereas the actual salaries of these incumbents is much higher. In support of this, the salary slip of such similarly situated employees of the Gujarat Maritime Board is produced which would indicate that such co-employees, namely, a designated Oilman/Cleaner is getting a net basic salary of Rs.45,000/-.

3.4 Mr. Vyas, learned advocate would further submit that their regular recruitment process was undertaken after a detailed advertisement. A high level committee comprising of the representatives of the Home Department were present, namely, the Additional Secretary Law and Order, Director of Sainik Welfare Board, a representative each of the Indian Navy, the Coast Guard and the Police, which Committee selected the petitioners after verifying their qualifications and antecedents. The Coastal Security Scheme, according to the learned advocate is not a temporary project and therefore the petitioners should be given the benefit of regularization and regular pay scale. After the petition was filed, an amendment was moved which was granted, by which the Government Resolution dated 17.06.2016 was challenged inasmuch as, a decision was taken to fill up the posts for operating interceptor boats from armed police constabulary working in the State Reserved Police Force.

3.5 Mr.Vyas would submit that the appointments of the petitioners

were made pursuant to an advertisement widely published after following the prescribed selection procedure. Admittedly, the State Government has not finalized the recruitment rules and hence the tenure of the crew members is renewed from time to time. The petitioners have been in service for more than 11 years. Their services ought to be regularized. A resolution dated 04.09.2008 was issued by the State wherein it was resolved that the crew members will be appointed in a regular pay-scale. That resolution Mr. Vyas has annexed to the rejoinder at Annexure R2 which indicates that the regular pay-scale that the crew members engaged in such activity would be as under:

<b>Name of Post</b>	<b>Pay-scale</b>
Master	5500-175-9000
Syrang	4000-100-6000
Engine Driver	4000-100-6000
Oilman	3200-85-4900

3.6 Mr. Vyas would rely on the decision of the Apex Court in the case of **State of Haryana vs. Piara Singh [(1994) 4 SCC 118]** and submit that it is observed by the Apex Court therein that if for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is

satisfactory and his appointment does not run counter to the reservation policy of the State.

4. Learned AGPs in the respective petitions would submit that the Coastal Security Scheme was extended to the State in 2011 in an extended manner which was initially envisaged in the year 2005. In March 2014, the Inspector General of Police, Coastal Security had organized an interview. The petitioners had applied knowing with open eyes that their appointments were contractual. An undertaking to that effect has been given by the petitioners. These appointments were fixed pay appointments. The recruitment rules for the crew members such as posts of Master, Syrang, Engine Driver and Oilmen were framed and published in the Government Gazette on 04.07.2008. During the course of selection, it was found that the candidates according to the qualification were not available and it was therefore decided to relax the qualifications specified in the rules. Learned AGPs submitted that the administrative procedure to relax the specifications made in the recruitment rules is under consideration and therefore the tenure of the petitioners – crew members is being renewed from time to time. The petitioners, in the perception of the respondents, are not entitled to a regular pay-scale as on a contractual basis by virtue of a resolution dated 20.11.2008, fixed pay of Rs.13000/- to a Master, Rs.9500/- to a Syrang,

Rs.9500/- to an Engine Driver and Rs.7500/- to an Oilman/Cleaner are being paid. Learned AGPs would submit that thereafter from 01.01.2020 for the categories above the fixed pay has been enhanced to Rs.25,000/- to a Master; Rs.18,000/- to a Syrang; Rs.18000/- to an Engine Driver and Rs.10000/- to an Oilman/Cleaner.

4.1 Relying on the affidavit a submission is made that the nature of the services are not permanent, depending on weather conditions such as in monsoon for approximately four months no services are required of the petitioners and therefore it is not open for the petitioners to claim regularization.

5. Having considered the submissions made by the learned counsels for the respective parties, what is evident from the pleadings on record and the resolution dated 04.07.2008 is that under the Coastal Security Plan 140 vacancies on an honorary basis were sanctioned. The government amended the resolution so made on 05.09.2006 by a resolution dated 04.09.2008. Reading the translated copy of the resolution which is reproduced hereunder would become evident as under:

“To set up new posts under the

## Coastal Security Plan

Government of Gujarat  
Home Department  
Amendment  
Sachivalaya Gandhinagar  
04.09.2008

Ref :

Government Resolution Home Department No.  
1005/5766 dated 05.09.2006.

Amendment :

By a resolution dated 05.09.2006, under the Coastal Security Scheme posts of Tandel, Driver, Khalasi and Assistant Driver, each having 35 posts, in all 140 posts were created on the basis of granting them appointments on an honorarium basis.

After due consideration and re-consideration the government is of the opinion that they should be given a designation on a pay-scale basis as under:

Sr. No.	Name of Post	Number	Pay-scale
1	2	3	4
1	Master	35	5500-175-9000
2	Syrang	35	4000-100-6000
3	Engine Driver	35	4000-100-6000
4	Oilman	35	3200-85-4900

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sd/-  
Deputy Secretary  
Home Department”

6. Apparently, therefore, on reading the resolution dated 04.09.2008



would indicate that the appointees who are otherwise on an honorarium basis a conversion was made by designating them as posts with a corresponding pay-scale. This resolution is of the year 2008. The affidavit-in-reply indicates that the recruitment rules were in existence in the year 2008 and no appointments were made pursuant to the rules even after relaxation of qualifications. Though the averments of the affidavit indicate of the publication of the rules by way of a government gazette on 04.07.2008, the recruitment rules are not on record. The stand of the government is that even after relaxation of qualification since regular appointees were not available, the administrative procedure for relaxation of specification in the recruitment rules is under consideration by the Government of Gujarat. Affidavit's paras 7.4 and 7.5 read as under:

“7.4 That, the Recruitment Rules (RR) for the various posts of Crew-members viz. Master Serang, Engine Driver and Oilman (Cleaner) were framed and published in the Government Gazette on 04/07/2008. During the course of selection process, it is found that candidates according to the qualifications finalized in the Recruitment Rules (RR) were not available and accordingly it was decided to relax the qualification specified in the Recruitment Rules (RR). Since the administrative procedure to relax the specifications made in the Recruitment Rules (RR) has been under consideration by the Government of Gujarat, the tenure of Crew-members has been renewed from time to time.

7.5 That, the resolution of Recruitment Rules was published for Crew members of Interceptor Boats on 4/7/2008, by Home Department of Gujarat. In the selection process, the qualified candidates mentioned in the

Recruitment Rules were not available and accordingly it was decided to relax the qualification specified in the Recruitment Rules. Recruitment Rules has been under consideration by the Government of Gujarat. The crew members on the appointed contract have been re-appointed from time to time.”

6.1 Reading the affidavit indicates that since in the selection process qualified candidates mentioned in the recruitment rules were not available relaxation of qualification is under consideration of the Government of Gujarat.

7. Even the minutes of the meeting placed on record with the rejoinder and the circular of 20.11.2008 would indicate that the petitioners have been recruited, albeit, on a contractual basis, after a public advertisement and a duly constituted selection committee consisting of the Additional Secretary, Law & Order, Director of Sainik Welfare Board, a representative each of the police, navy and coats guard respectively and a Jilla Sainik Kalyan Officer. The qualifications have been set out in the resolution of 20.11.2008. In absence of any denial and on the materials of the recruitment rules being produced of 2008, it can be safely presumed that the petitioners who have been working over a period of time have not only with the passage of time but with the initial appointments made in accordance with the procedures of the selection committee are deemed to be qualified for being appointed on a regular

basis at the hands of the government, which as the affidavit indicates, is considering relaxation of the qualifications under the Recruitment Rules, 2008 (which are not on record though). The 04.09.2008 circular also which is reproduced hereunder indicates awarding of regular pay-scale to the categories of Master, Syrang or Engine Driver and Oilmen-cum-cleaner.

8. Considering these admitted facts, the respondents are directed to consider the case of the petitioners for appointments on a regular basis and for they being awarded a regular pay-scale which has been revised from time to time post the resolution of 04.09.2008. The regularization be considered from either their initial date of appointment or the date of the recruitment rules of 04.07.2008 having come into force and in accordance with the relaxations that the State Government, according to the deponent, are pending consideration. The petitioners' case shall be considered for regular pay-scale and allowances as prima facie their selection is in accordance with the prescribed manner which cannot be said to be an illegal appointment, which may at best, be irregular.

9. With the aforesaid observations, with a direction to consider the case of the petitioners for regularization of their services from their dates of appointments and/or the dates of recruitment rules being 04.07.2008,

the petitioners' case be considered and regularized in service by relaxing the qualifications and requirements, as admittedly, the same is under consideration of the respondent department. Pending this exercise, the petitioner shall be entitled to being paid the benefits as per the resolution dated 04.09.2008 on the pay-scales revised from time to time from 01.01.2019, the petitioner having approached this court in February 2019.

10. The case of the petitioners of Special Civil Application No. 19578 of 2021 is concerned, adding to the submissions of Mr. Vyas, Mr. Bloch would submit that pending the petition, services of petitioners no. 2 to 7 have been terminated. In view of the observations made by this court in the aforesaid order, recommending regularization in context of the recruitment rules, the respondent shall consider the case of the petitioners no. 2 to 7 who have been terminated on the same lines and also extend the benefits, if thought fit and reinstate them in service and extend the same benefits to the petitioners who are in service. The petitions are partly allowed on the aforesaid terms. Civil Application is disposed of. Rule is made absolute accordingly.

DIVYA

sd/-  
**(BIREN VAISHNAV, J)**