



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

**WRIT PETITION NO.12939 OF 2019**

**BASAVRAJ  
GURAPPA  
PATIL**

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BASAVRAJ GURAPPA  
PATIL

Date: 2024.10.25  
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1. Rakesh Lal Meena  
Age 39 years, son of Phool  
Chand Meena, working  
as Staff Nurse in the union  
Territory of Daman & Diu  
and residing at A-2 Type  
Quarters, Ground Floor,  
Marwadi Hospital,  
Nani Daman – 396216
2. Pappu Lal Meena,  
aged 35 years,  
working as Staff Nurse,  
in the union Territory of  
Daman & Diu and residing  
at Government Quarter No.C/1/3,  
Near Station, Ghoghala,  
Diu 362 520.
3. Mrs. Mary Varghese,  
aged 43 years, working as Staff  
Nurse in the union Territory of  
Daman & Diu and residing at Flat  
No.205, Second Floor, Lisha  
Complex, Mashal Chowk, Airport  
Road, Nani Daman 396 216.
4. Molly Mathew, aged 43 years,  
working as Staff Nurse in the  
Union Territory of Daman & Diu,  
and residing at Flat No. 202,  
Pranav Apartment, Mashal Chowk,  
Nani Daman 396 210.
5. Jolly Joseph, aged 39 years,  
working as Staff Nurse  
in the union Territory of Daman

& Diu, and residing at Flat No.203,  
Sudershan Apartment, Sai Kripa  
Society No.2, Nani Daman 396 210.

6. Prabha P. dungdung,  
aged 43 years, working as Staff  
Nurse in the union Territory of  
Daman & Diu and residing at Flat  
No. 304, Royal Residency E,  
Khariwad, Nani Daman 396 210.
7. Bindu Joseph,  
aged 40 years, working as Staff  
Nurse in the union Territory of  
Daman & Diu and residing at House  
No. 7/221-B, Jose Villa, Shree  
Yogeshwar Mandi Road,  
Moti Daman 396 220.
8. Indraj Kumar Yadav,  
aged 37 yrs., working as Staff Nurse  
in the Union Territory of Daman &  
Diu and residing at House No. C-6,  
Government Agriculture Farm  
House, Koliwad Falia, Kachigaon,  
Nani Daman 396 210.
9. Vinod Punjabhai Bamamiya  
aged 28 years, working as Staff  
Nurse in the union Territory of  
Daman & Diu and residing at  
1717(1) Dolawadi  
Saudwadi Diu – 362 570.
- 10 Neha Ramji Solanki,  
aged 31 years, working as Staff  
Nurse in the Union Territory of  
Daman & Diu and residing at  
Vadisheri, Azad Chowk,  
Vanakbara, Diu 362 570

.....Petitioners

**Versus**

- 1 Union of India through the  
Secretary, Ministry of Home  
Affairs, Government of India,  
North Block, New Delhi 110011
- 2 The Administrator, Union  
Territory of Daman, Diu and Dadra  
Nagar Haveli & Silvassa  
Secretariat, Moti Daman 396 220.
3. Director, Medical & Health  
Services, Directorate of Medical and  
Health Services, Administration  
of Daman & Diu, Primary Health  
Centre, Moti Daman 396 220
4. The Medical Superintendent  
Government Hospital, Daman  
Administration of Daman & Diu,  
(UT), Nani Daman 396 210.
5. The Member Secretary,  
Staff Selection Board, Union  
Territory of Daman & Diu, Moti  
Daman, Daman – 396 220. ....Respondents

Shri Ramesh Ramamurthy with Shri Saikumar  
Ramamurthy for the petitioners

Shri Harsh P. Dedhia with Ms. Amisha Salvi h/f.  
Shri H. S. Venegavkar for the respondent – UoI.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &  
AMIT BORKAR, J.**

**RESERVED ON : OCTOBER 23, 2024**  
**PRONOUNCED ON : OCTOBER 25, 2024**

**JUDGMENT (PER : CHIEF JUSTICE)**

**1.** Heard Shri Ramesh Ramamurthy, learned Counsel representing the petitioners and Shri Harsh P. Dedhia, learned Counsel representing the respondents.

**2.** By instituting this petition under Article 226 of the Constitution of India, the petitioners, who are working as Staff Nurse in the establishment of the respondents, assail the validity of the judgment and order dated 18<sup>th</sup> December 2018 passed by the Mumbai Bench of the Central Administrative Tribunal (hereinafter referred to as the "**Tribunal**") in a bunch of Original Applications, whereby the claim of the petitioners to be treated as having been regularly appointed, has not been acceded to and the Original Applications have been dismissed.

**3.** Facts of the present case, as can be gathered and culled out from the pleadings of the respective parties available on record and the submissions made by the learned Counsel for the parties, present before us a peculiar fact situation where the petitioners, except petitioner Nos.9 and 10 (Vinod Punjabhai Bamamiya and Neha Ramji Solanki, respectively), despite having been subjected to the process of regular selection and appointment as per the provisions of the relevant recruitment rules framed under Article 309 of the Constitution of India, have all along been treated to have been appointed on short term contract basis, though ever since their appointment made in the year 2006, they have been continuously working and discharging their duties with the respondents.

**4.** As is apparent from a perusal of the minutes of meeting of Selection Committee held on 22<sup>nd</sup> February 2006 which has been appended as **Exhibit-D** to the writ petition at pages 130 to 132, certain vacancies for selection and appointment against the post of Staff Nurse and Auxiliary Nurse Midwifery (ANMs) were advertised in Employment News and local daily newspapers and names were also called from local Employment Exchange. In response to the said advertisement, 154 candidates appeared seeking their selection and appointment on the post of Staff Nurse. A Selection Committee under the Chairmanship of Special Secretary (Health)/Director, Medical & Health Services was constituted which comprised of three other members viz. Medical Superintendent, Government Hospital, Daman, Dy. Director, Directorate of Medical & Health Services, Daman and Dy. Collector (HQ) Collectorate, Daman. The said Selection Committee met on 22<sup>nd</sup> February 2006 and conducted an interview for selection of suitable candidates for the posts in question.

**5.** The aforesaid Selection Committee, after assessing and evaluating the qualification, experience and performance in the interview of the candidates, prepared a select list comprising of 15 candidates. On the basis of the said selection, the Selection Committee also prepared a list of six candidates for being appointed with a proposal to create six posts of Staff Nurse.

**6.** The Departmental Selection Committee also prepared a wait list of 16 candidates for appointment against the post in question viz. post of Staff Nurse. At this juncture itself, we may point out that recommendation for appointment of 15 candidates on the

post of Staff nurse was made by the Selection Committee on the basis of aforesaid selection held on 22<sup>nd</sup> February 2006 against vacant posts as is apparent from the averments made in paragraph 14 of the affidavit-in-reply filed by the respondents. Paragraph 14 of the affidavit-in-reply filed by the respondents is extracted hereunder:

"14. It is stated that, when Petitioner was considered first time for short terms contract **there were 154 candidates appeared for 15 vacant posts of Staff Nurse. Out of which 15 candidates have been selected and NIL candidates are kept on waiting list. At that time, there was only interview and no written test was conducted.** The local advertisement/names from employment exchange were called for. There was no written examination, the post being filled in on contract basis. Hence, only interview was conducted for selection."

**7.** The following 15 candidates were included in the select list.

After assessing their qualifications, experiences and performance in the oral interview, the Department Selection Committee, selected the below mentioned candidate on merit for the above said posts on short term contract basis initially for a period of one year.

Sr. No.	Name of the selected candidate	Name of the post with Pay Scale	
<i>I. STAFF NURSE</i>			
1.	<i>Nail Dinubala Dahyabhai</i>	Staff Nurse (Fixed pay Rs.9,075/- p.m.)	
2.	<i>Patel Vaishali Kishorbhai</i>		
3.	<i>Sam Thomas</i>		
4.	<i>Smt. Suneeta John Wesly Sonty</i>		
5.	<i>Bhupeshkumar Dixit</i>		
6.	<i>Rajendrakumar Meena</i>		
7.	<i>Patel Jignasha Jagdishkumar</i>		
8.	<i>Indraj Kumar Yadav</i>		Petitioner No.8
9.	<i>Satyaveer Yadav</i>		
10.	<i>Bhavyesh Venilal Vaja</i>		
11.	<i>Kum. Kotiya Anuradha</i>		
12.	<i>Dharma Pal Yadav</i>		
13.	<i>Pappulal Meena</i>		Petitioner No.2
14.	<i>Mrs. Bindu Joseph</i>		Petitioner No.7
15.	<i>Gojaria Sonal D.</i>		

**8.** As noted above, a select list of six candidates was also prepared for appointment against the post of Staff Nurse and simultaneously it was proposed to create six posts. The names of the candidates recommended for appointment as Staff Nurse in respect of whom proposal to create six posts was made are as under:

*This Administration has proposed to create the 6 posts of Staff Nurse for Accident cum Trauma Unit in the U.T. of Daman & Diu. Hence, it is proposed to fill up the said post on Short Term Contract Basis as under:*

1.	Molly Mathew.	Petitioner No.4
2.	Mrs. Marry Varghese.	Petitioner No.3
3.	Jolly Joseph.	Petitioner No.5
4.	Prabha Prafulit Dungdung.	Petitioner No.6
5.	Nila Dayabhai Ajudia.	
6.	Jora Anitaben Govindbhai.	

**9.** Apart from the aforesaid select list a wait list was also prepared which included names of 16 candidates which are as follows:

*"The Departmental Selection Committee have also considered the below mentioned candidate to be kept on waiting list:*

Sr. No.	Name of the selected candidate	
<b>I. STAFF NURSE</b>		
1.	Rakesh Lal Meena	Petitioner No.1
2.	Sosamma Santosh	
3.	Vineetkumar Dhilan	
4.	Varsha D. Rathod	
5.	Dudhatra Shital K.	
6.	Rathod Kailashben P.	
7.	Divya A. Patel	
8.	Bhiya Ram	
9.	Patel Arpit Vinodbhai	
10.	Chaudhari Gitaben Girishbhai	
11.	Suresh Gupta	
12.	Shyabu Lal Meena	
13.	Patel Ashaben Kikabhai	
14.	Patel Lalitaben Kiranbhai	

15.	<i>Patel Kailashaben Kantilal</i>	
<b>II. AUXILIARY NURSE MIDWIVES (ANMs)</b>		
1.	<i>Patel Vaishali Kishorbhai</i>	
2.	<i>Smita Chacko</i>	
3.	<i>Nimisha Chhotalal Vangaia</i>	
4.	<i>Sujana Vinodkumar</i>	
5.	<i>Parmar Smitaben Jayantibhai</i>	
6.	<i>Chudhari Sanyakta Jitendra</i>	
7.	<i>Mistry Rubiya Mohmadbhai</i>	
8.	<i>Patel Chetna Mangu</i>	
9.	<i>Patel Heena Kirit</i>	

**10.** The aforesaid information has been gathered by the Court from the minutes of the Selection Committee meeting held on 22<sup>nd</sup> February 2006 according to which petitioner No.1 was appointed against one of the 15 vacancies available at that time from amongst the candidates listed in the wait list, whereas petitioner Nos.2, 7 and 8 were appointed against three distinct vacancies available against 15 sanctioned posts from the main select list. So far as petitioner Nos.3, 4, 5 and 6 are concerned, as per the aforesaid minutes of the meeting of Departmental Selection Committee, they were appointed against six posts of Staff Nurse which were proposed to be created.

**11.** So far as petitioner Nos.9 and 10 are concerned, their names do not find mentioned in the minutes of the meeting of the Selection Committee held on 22<sup>nd</sup> February 2006 and accordingly, the case of petitioner Nos.9 and 10 is distinguishable from the case of petitioner Nos.1 to 8.

**12.** It is also to be noticed that though selection of petitioner Nos.1 to 8 was made against the vacancies available in the duly sanctioned posts, after advertisement in the employment news



and daily newspapers and the names of the candidates having been called from the local Employment Exchange and on the basis of selection held by the Selection Committee, however, in their appointment letters it was stated that they were appointed on short term contract for a period of six months or till the post is created and filled up on regular basis, whichever is earlier, at consolidated fixed pay of Rs.9075/- pm.

**13.** In support of their claim that the petitioners' appointment ought to be treated to be regular appointment, it has been argued by learned Counsel for the petitioners that since the appointment of the petitioners was made after due advertisement and they were subjected to a selection process which is in tune with the provisions contained in the recruitment rules framed under Article 309 of the Constitution of India, treating the petitioners to have been appointed on contract basis amounts to unfair labour practice and as a matter of fact, the petitioners ought to be treated to have been appointed on regular basis.

**14.** The argument made by the learned Counsel for the petitioners has been opposed by the learned Counsel representing the respondents, who has stated that the minutes of the meeting of the Selection Committee held on 22<sup>nd</sup> February 2006 itself mentions that the selection was held for appointment against the post of Staff Nurse on short term contract basis, which fact was clearly mentioned in the appointment order issued to the petitioners as well and accordingly, the submission made by the learned Counsel for the petitioners that their appointment ought to be treated to be regular from the date of their initial

appointment, is not tenable.

**15.** The issue, thus, which has arisen for our consideration and decision is as to whether the initial appointment of the petitioners made as Staff Nurse on the basis of the selection held by the Departmental Selection Committee in its meeting held on 22<sup>nd</sup> February 2006 is to be treated to be regular appointment or such appointment has to be treated otherwise; that is to say appointment on contract basis.

**16.** For determination of the aforesaid issue, what is relevant for the Court to find is as to whether the procedure prescribed for regular selection and appointment in the recruitment rules applicable for appointment to the post of Staff Nurse was followed while making initial appointment of the petitioners or not. If we conclude, on the basis of the records available before us, that the recruitment rules were followed and appointments were made against duly sanctioned posts, there is no reason for this Court to not to arrive at the conclusion that the initial appointment of the petitioners as Staff Nurse was made on regular basis.

**17.** In this regard, we may take note of the service rules regulating the conditions of service, which include the appointment on the post of Staff Nurse. The said rules were notified on 2<sup>nd</sup> February 1967 having been framed under the proviso appended to Article 309 of the Constitution of India and are known as **Goa Government (Directorate of Health Services) non-ministerial, non-gazetted class III Recruitment Rules, 1967** (hereinafter referred to as the

**Service Rules, 1967).**

**18.** As per Rule 2 of the Service Rules, 1967, the said service rules apply to the posts specified in column 1 of the Schedule appended thereto. In column 1 of the Schedule at Sr.No.14, the post of Staff Nurse is mentioned. Accordingly, there is no doubt that Service Rules, 1967 govern the appointment on the post of Staff Nurse.

**19.** Rule 3 provides that number of posts, classification of posts and scales of pay attached to the posts shall be as specified in column Nos.2 to 4 of the Schedule, according to which cader strength of the post of Staff Nurse was 164 and the post of Staff Nurse was classified as Class-III (non-ministerial, non-gazetted) post. The said Schedule further discloses that at the relevant point of time, the pay scale which the post of Staff Nurse carried was Rs.150-280. The educational and other qualifications required for direct recruitment to the post of Staff Nurse as per the prescription available in the Schedule appended to the Service Rules, 1967 is provided in column No.7 according to which the essential qualification for the post was (i) A grade certificate in nursing from a recognized institution, and (ii) Certificate in Mid-wifery. The desirable qualification for the post in question was knowledge of local language. The relevant extract of the Schedule appended to Service Rules, 1967 is extracted hereineblow:

## SCHEDULE

Name of post	No. of posts	Classification	Scale of Pay	Whether Selection Post or non-Selection Post	Age limit for direct recruits	Educational and other qualifications required for direct recruits	Whether age and educational qualification prescribed for the direct recruits will apply in the case of promotes	Period of probation, if any.	Method of recruitment whether by direct recruitment or by promotion or by deputation/transfer, and percentage of the vacancies to be filled by various methods	In case of recruitment by promotion/deputation/transfer, grades from which promotion/deputation/transfer to be made	If a DPC exists what is its composition	Circumstances in which U.P.S.C. is to be consulted in making recruitment
1	2	3	4	5	6	7	8	9	10	11	12	13
1. House Keeper	One	Class III (Non-ministerial) (Non-gazetted)	Rs.110-3-131-4-143-EB-4-155	N.A.	18 to 25 years	Essential: Matriculation or equivalent Desirable: Experience of having worked in Hostels	N.A.	Two years	Direct recruitment	N.A.	N.A.	As required under the rules
2. Librarian	One	Do	Rs.210-10-290-15-320	N.A.	Below 30 years	1. Graduate. 2. Diploma in Library Science of a recognized Institution. 3. Three years of experience preferably a Medical College Library (Relax Clause)	N.A.	Do	Do	Do	Do	Do
3. Insect Collector	8	Do	Rs.110-3-131	N.A.	18 to 25 years	Matriculation or equivalent.	Do	Do	Do	Do	Do	Do
4. Mechanic II	1	Do	Rs.110-3-131-4-155-EB-4-175-5-180	N.A.	Below 30 years	Should have successfully passed the certificate course in Mechanics from a recognized Institution with	Do	Do	Do	Do	Do	Do

						preferably good working experience of the trade						
5.Mechanic I	5	Do	Rs.150-10-250-EB-10-290-15-335-EB-15-380	Selection	Do	1. Matriculation or equivalent. 2. Diploma in Mechanical Engineering of a recognized Institution Or Certificate in Mechanics of a recognized Institution with 5 years experience.	Age: No QIs – No	Do	Promotion - 20% (failing which by direct recruitment) direct recruitment – 80%	Promotion: Mechanic II with 5l years' standing	Class III D.P.C.	Do
6.Draftsman	1	Do	Rs.205-7-240-8-280	N.A.	Do	1.Matriculation or equivalent. 2. Diploma in Draftsman Course.	N.A.	Do	Direct recruitment	N. A.	N. A.	Do
7. Veterinary Assistant	1	Do	Rs.110-3-131-4-143-EB-4-155	N.A.	18 to 25 years	Certificate or training in the course of stock Assistant/ Stockman from a recognized Institute. (Relaxable in the case of the candidate otherwise well-qualified	N.A.	Do	Do	Do	Do	Do
8. Malaria Inspector	6	Do	Rs.130-5-160-8-220-EB-8-256	N.A.	Do	Matriculation or equivalent with Science subjects	Do	Do	Do	Do	Do	Do
9. Steward	10	Do	Rs.130-5-160-8-200-EB-8-256-EB-8-280-10-300	N.A.	Do	Matriculation or equivalent Desirable: Experience of working in a Hospital or a Medical Institution.	Do	Do	Do	Do	Do	Do

10. Surveillance Inspector	22	Do	Rs.130-5-160-8-200-EB-8-256	Selection	Do	Matriculation or equivalent	Age- No QIs- Yes	Do	Promotion failing which by direct recruitment	Promotion: Surveillance worker with 3 years' standing in the grade	Class-III D.P.C.	Do	
11. Midwife	27	Do	Rs.110-4-150-EB-4-170-5-180	N.A.	30 years or below	Middle Pass having passed Midwifery course from a recognized Institution with a certificate to practice midwifery from Indian Nursing Council.	N.A.	Do	Direct recruitment	N.A.	N. A.	Do	
12. Nurse Midwife	20	Do	Rs.150-5-175-6-205-EB-7-240-8-256-EB-8-280	N.A.	35 years or below	Essential: 1. A grade certificate in Nursing from a recognized Institution. 2. Certificate in Midwifery. (Qualifications relaxable in case of candidates otherwise well-qualified). Desirable: Knowledge of local languages.	Do	Do	Do	Do	Do	Do	
13. Nurse	20	Do	Rs.130-5-160-8-200-EB-8-256.										
14. Staff Nurse	164	Do	Rs.150-5-175-6-205-EB-7-240-8-256-EB-8-280										

**20.** Column 10 of the Schedule against the post of Staff Nurse mentions that the said post was to be filled-in by way of direct recruitment. Column No.13 of the Schedule contains information relating to various posts as to under what circumstances Union Public Service Commission (UPSC) was to be consulted in making recruitment. Against the post in question viz. Staff Nurse, column 13 mentions “as required under the rules”.

**21.** Rule 4 of the Service Rules, 1967 provides for the method of recruitment to the posts, age limit, qualifications and other matters connected therewith as mentioned in column 5 to 13 of the Schedule. When we gather the information from a perusal of the Schedule appended to Service Rules, 1967 in relation to recruitment/appointment of the post of Staff Nurse, what we find is that the post of Staff Nurse is a Class-III post, the prescribed age limit is 35 years or below, the essential qualification is A grade certificate in nursing from a recognized institution, certificate in mid-wifery, the method of recruitment is by way of direct recruitment and there was no requirement of consultation with the UPSC for making recruitment.

**22.** Rule 5 of the Service Rules, 1967 provides that the said Rules shall come into effect from the date of Notification. It is relevant to note that Service Rules, 1967 do not prescribe constitution of Selection Committee and accordingly we are of the opinion that in case the appointment of the petitioners, initially, was made after advertisement, against the vacancies available in sanctioned posts, the petitioners were subjected to selection and they fulfilled the requisite qualification and the criteria of age, their

appointment has to be treated to be regular appointment, irrespective of the fact that in their initial appointment letter it was mentioned that they were appointed on contract basis.

**23.** There is no denial to the fact that as per the requirement mentioned in the Schedule appended to Service Rules, 1967, the petitioners fulfilled the minimum educational qualification and they also fulfilled the criteria of age given therein. It is also not denied by the respondents that a Selection Committee comprising of Special Secretary (Health)/Director, Medical & Health Services as its Chairman and Medical Superintendent, Government Hospital, Daman, Dy. Director, Directorate of Medical & Health Services, Daman, Dy. Collector (HQ), Collectorate, Daman, as its members had held the selection in a meeting held on 22<sup>nd</sup> February 2006. As is apparent from a perusal of the minutes of the Departmental Selection Committee meeting held on 22<sup>nd</sup> February 2006, the advertisement pursuant to which the selection was held, was published in the employment news and local daily newspapers. It is also apparent that apart from publishing the advertisement for recruitment for the post in question in employment news and daily newspapers, names were also called from the local Employment Exchange. Thus, so far as the requirement of advertisement for making regular appointment in public employment is concerned, the said condition was clearly fulfilled.

**24.** We have already noticed that the respondents do not deny that the petitioners fulfilled the essential educational qualification and the criteria of age as per the provisions for the said purpose



available in the Service Rules, 1967. There is yet another precondition for treating an appointment to be regular, which is, that for regular appointment, the selection has to be made against available vacancy in the duly sanctioned post. We have already extracted above paragraph 14 of the affidavit-in-reply filed by the respondents wherein it has been stated that for the post of Staff Nurse 154 candidates had appeared for 15 vacant posts. Accordingly, it cannot be denied that those petitioners who were appointed on the basis of selection held on 22<sup>nd</sup> February 2006 from the select list viz. petitioner Nos.2, 7 and 8 were appointed against clear vacancies in the duly sanctioned posts. Similarly, since petitioner No.1 was appointed from the wait list as is apparent from the perusal of the minutes of the Departmental Selection Committee meeting held on 22<sup>nd</sup> February 2006, there cannot be any doubt that his appointment was also made against available vacancy in a sanctioned post.

**25.** So far as petitioner Nos.3, 4, 5 and 6 are concerned, they were also subjected to the same selection process held by the Departmental Selection Committee on 22<sup>nd</sup> February 2006 and were appointed against six posts of Staff Nurse which were proposed to be created. They have also continued to work till date ever since their initial appointment with the respondents. We may also note that on 29<sup>th</sup> November, 2017, 52 posts of Staff Nurse were advertised out of which appointment of only 21 candidates was made vide order dated 19<sup>th</sup> March 2019. Accordingly, in terms of the proposal for creation of six posts, these petitioners, viz. petitioner Nos.3, 4, 5 and 6 were appointed against the posts in which vacancies may not have been available on 22<sup>nd</sup> February

2006 when the selection was held however, subsequently, the vacancies occurred as is apparent from the fact that as against 52 posts advertised on 29<sup>th</sup> November, 2017 only 21 appointments were made vide order dated 19<sup>th</sup> March 2019.

**26.** An appointment to qualify as a regular appointment should be made on the basis of selection held by a duly constituted selection committee in terms of the requirement of recruitment rules. We have already noticed that Service Rules, 1967 do not provide for composition of any Selection Committee, however, as per the minutes of meeting of the Departmental Selection Committee held on 22<sup>nd</sup> February 2006 the Selection Committee which evaluated the candidature of the petitioners and other candidates was headed by Special Secretary (Health)/Director, Medical & Health Services and the Medical Superintendent, Government Hospital, Daman, Dy. Director, Directorate of Medical & Health Services, Daman and Dy. Collector (HQ) Collectorate, Daman, were its members. In absence of any clear prescription regarding composition of a Selection Committee in the Service Rules, 1967, it cannot be said that the selection of the petitioners was not made by a duly constituted Selection Committee. Had the Service Rules, 1967 provided any particular composition of the Selection Committee and the composition of the Selection Committee which held its meeting on 22<sup>nd</sup> February 2006 would not have matched with the composition as provided in the Service Rules, 1967, it could be said that the petitioners were not subjected to the selection process by the duly constituted Selection Committee. However, as already observed above, since Service Rules, 1967 do not prescribe any composition of Selection

Committee, as such, we have no hesitation in concluding that appointment of the petitioners was made on the basis of the recommendation made by the Selection Committee which was appropriately constituted.

**27.** The minutes of the meeting of the Departmental Selection Committee held on 22<sup>nd</sup> February 2006 are extracted hereinbelow:

*MINUTES OF THE DEPARTMENTAL SELECTION COMMITTEE MEETING HELD ON 22ND FEBRUARY 2006 AT 10.30 A.M. IN THE CHAMBER OF THE SPECIAL SECRETARY (HEALTH)/DIRECTOR, MEDICAL & HEALTH SERVICES, UT OF DAMAN & DIU FOR SELECTION OF SUITABLE CANDIDATE FOR THE POSTS OF STAFF NURSE AND AUXILIARY NURSE MIDWIVES (ANM) (GROUP 'C' POSTS) IN THE DTE. OF MEDICAL & HEALTH SERVICES, DAMAN & DIU ON SHORT TERM CONTRACT BASIS.*

*-----  
Following members of Departmental Selection Committee attended the meeting in the Chamber of Special Secretary (Health)/Director, Medical & Health Services, UT of Daman & Diu, Daman on 22<sup>nd</sup> February 2006 at 10.30 a.m. onwards.*

- |  |          |
|--|----------|
| 1. Dr. S. S. Vaishya,<br>Special Secretary (Health)/Director,<br>Medical & Health Services, PHC, Moti<br>Daman | Chairman |
| 2. Dr. B. R. Chand<br>Medical Superintendent,<br>Govt. Hospital, Daman   | Member   |
| 3. Dr. B. Hansraj,<br>Dy. Director,<br>Dte of Medical & Health Services,<br>PHC, Moti Daman                    | Member   |
| 4. Shri Neeraj Semwal,<br>Dy. Collector (HQ), Collectorate, Daman  | Member   |

*The Dy. Secretary, (Health), Daman & Diu did not attend the meeting due to pre-occupation. The Departmental Selection Committee conducted walk-in-interview for selection of suitable candidate for the post of Staff Nurse (15 posts) – Consolidated salary Rs.9,075/- and ANMs (05 posts) – Consolidated salary Rs.7,260/- on short term contract basis in the Dte. Of Medical & Health Services, Daman & Diu for a period of one year only.*

The post was advertised in the Employment News and local daily newspapers and names were also called from the local employment exchange. In response to this, 154 candidates have been appeared for the post of Staff Nurse and 67 candidates for the post of ANMs.

After assessing their qualifications, experiences and performance in the oral interview, the Department Selection Committee, selected the below mentioned candidate on merit for the above said posts on short term contract basis initially for a period of one year.

Sr. No.	Name of the selected candidate	Name of the post with Pay Scale
<b>I. STAFF NURSE</b>		
1.	Nail Dinubala Dahyabhai	Staff Nurse (Fixed pay Rs.9,075/- p.m.)
2.	Patel Vaishali Kishorbhai	
3.	Sam Thomas	
4.	Smt. Suneeta John Wesly Sonty	
5.	Bhupeshkumar Dixit	
6.	Rajendrakumar Meena	
7.	Patel Jignasha Jagdishkumar	
8.	Indraj Kumar Yadav	
9.	Satyaveer Yadav	
10.	Bhavyesh Venilal Vaja	
11.	Kum. Kotiya Anuradha	
12.	Dharma Pal Yadav	
13.	Pappulal Meena	
14.	Mrs. Bindu Joseph	
15.	Gojaria Sonal D.	

This Administration has proposed to create the 6 posts of Staff Nurse for Accident cum Trauma Unit in the U.T. of Daman & Diu. Hence, it is proposed to fill up the said post on Short Term Contract Basis as under:

1.	Molly Mathew.
2.	Mrs. Marry Varghese.
3.	Jolly Joseph.
4.	Prabha Prafulit Dungdung.
5.	Nila Dayabhai Ajudia.
6.	Jora Anitaben Govindbhai.

Sr. No.	Name of the selected candidate	Name of the post with Pay Scale
<b>II. AUXILIARY NURSE MIDWIVES (ANMs)</b>		
1.	Dhodi Vanitaben Khalpabhai	Auxiliary Nurse Midwives (ANM) (Fixed pay Rs.7,260/- p.m.)
2.	Halpati Rekhaben Ramubhai	
3.	Parmar Damyanti Gumanbhai	
4.	Minimol R. Nair	
5.	Patel Pushpa Ramji	

This Administration has sanctioned appointment of 8 ANMs on daily wages. 4 ANMs has been proper to appoint on Short term contract basis, and 8 ANMs on daily wages as under:

1. Liji S. Varghese
2. Anamma Mathew
3. Patel Jignasa Babu
4. Dhimar Kaushika Ukad
5. Threjiamma Joseph
6. Soly Sebastian
7. Zaheda A. Gangdani
8. Ruby S. Mekwan

"The Departmental Selection Committee have also considered the below mentioned candidate to be kept on waiting list:

Sr. No.	Name of the selected candidate	
<b>I. STAFF NRUSE</b>		
1.	Rakesh Lal Meena	Petitioner No.1
2.	Sosamma Santosh	
3.	Vineetkumar Dhilan	
4.	Varsha D. Rathod	
5.	Dudhatra Shital K.	
6.	Rathod Kailashben P.	
7.	Divya A. Patel	
8.	Bhiya Ram	
9.	Patel Arpit Vinodbhai	
10.	Chaudhari Gitaben Girishbhai	
11.	Suresh Gupta	
12.	Shyabu Lal Meena	
13.	Patel Ashaben Kikabhai	
14.	Patel Lalitaben Kiranbhai	
15.	Patel Kailashaben Kantilal	
<b>II. AUXILIARY NURSE MIDWIVES (ANMs)</b>		
1.	Patel Vaishali Kishorbhai	
2.	Smita Chacko	
3.	Nimisha Chhotalal Vangaia	

4.	<i>Sujana Vinodkumar</i>	
5.	<i>Parmar Smitaben Jayantibhai</i>	
6.	<i>Chudhari Sanyakta Jitendra</i>	
7.	<i>Mistry Rubiya Mohmadbhai</i>	
8.	<i>Patel Chetna Mangu</i>	
9.	<i>Patel Heena Kirit</i>	

*Sd/-  
(Dr.S.S.Vaishya)  
Spl.Secretary(H)/Director, Medical & Health Services,  
Daman & Diu  
Chairman*

*Sd/-  
(Dr.B.R.Chand)  
Medical Superintendent, Daman  
Member*

*Sd/-  
(Dr.B.Hansraj)  
Dy. Director, M & HS, Daman,  
Member*

*Sd/-  
(Neeraj Semwal)  
Dy. Collector (HQ), Daman,  
Member"*

**28.** Thus, from the aforesaid discussion which is based on the records available before us on this petition, what we conclude is that since the appointment of the petitioners was made after due advertisement, on the basis of recommendation made by the Departmental Selection Committee, they fulfilled the minimum educational qualification for the post in question and also the age criteria as per the requirement of Service Rules, 1967, terming their initial appointment as appointment on contract basis, in our opinion, cannot be accepted merely because their initial appointment letters mentioned that their appointments were made on contract basis. To decipher as to whether appointment of the petitioners was made on regular basis, what is significant

to notice is the process of appointment followed, which in the instant case, as observed above, was as per the prescription available in the Service Rules, 1967 framed under Article 309 of the Constitution of India. If the regular selection process has been followed in terms of the provisions available in the Service Rules, 1967, merely because initial appointment order of the petitioners described the appointment to be on contract basis, in our considered opinion, it will not render the appointment of the petitioners to be on contract basis or irregular in any manner. In these circumstances, depriving the benefit of regular appointment of the petitioners on the post of Staff Nurse is wholly arbitrary, unreasonable and illegal.

**29.** At this juncture, we may also note that ever since their initial appointment, the petitioners have continued to discharge their functions and duties and what necessitated the petitioners to file the Original Applications before the Tribunal was the advertisement issued on 29<sup>th</sup> November 2017. The petitioners, thus, by filing the Original Applications, not only challenged the said advertisement but also made a prayer for holding and declaring that the petitioners' appointment is regular appointment since the date of their initial appointment. The Original Applications were filed by the petitioners apprehending that appointment would be made pursuant to the selection which was to be held in terms of the advertisement dated 29<sup>th</sup> November 2017 against the vacancies being occupied by the petitioners and once such selection was made, the petitioners may be ousted from employment. We may also note that in supersession of all earlier recruitment rules, which will include the Service Rules, 1967, the

respondents vide Notification dated 9<sup>th</sup> January 2012 promulgated another set of rules known as "the Administration of Daman and Diu, Directorate of Medical & Health Services, (Grade "B" Non Gazetted/Non Ministerial) Posts Recruitment Rules, 2011, which were made under Article 309 of the Constitution of India and govern the recruitment/appointment on the post of Staff Nurse. However, at the relevant time viz. at the time when the meeting of the Selection Committee was held on 22<sup>nd</sup> February 2006 it is the Service Rules, 1967 which were in vogue and not 2011 Rules.

**30.** It is also relevant to note that in paragraph 8 of the affidavit-in-reply filed by the respondents it has been stated that the petitioners were appointed under the provisions of the recruitment rules of the Union Territory of Diu and Daman Directorate of Medical & Health Services, Daman which are annexed at page 232 to 239 of the writ petition. Paragraph 8 of the affidavit-in-reply filed by the respondent is extracted hereinebelow:

*"8. Accordingly, the Petitioner was appointed on purely short term contract basis vide order dated 07-07-2006. It is clear from the said order that, the Petitioner was appointed under the provisions of UT R.R. of (UT Scheme) Admn. of Daman and Diu, Directorate of Medical & Health Services, Daman (page 232 to 239 of the WP). It is therefore, respectfully submitted that there is no question of regular selection and regular post and the prayer for regularisation in services is not maintainable in law."*

**31.** It is also noticed that at pages 232 to 239 of the writ petition the document which is enclosed is the Service Rules, 1967. Accordingly it is rather admitted by the respondents that appointment of the petitioners was made in terms of the provisions contained in Service Rules, 1967.



**32.** From the facts as discussed above, we have no ambiguity in our mind to hold that the appointment of the petitioners was made after due advertisement and due selection by Departmental Selection Committee against clear vacancies available in the duly sanctioned posts and further that the petitioners fulfilled the requisite qualification in terms of the prescription available in the Service Rules, 1967. Thus, merely because the initial appointment orders issued to the petitioners mentioned that the appointment was made on contractual basis, it cannot be said that the petitioners' appointment was not made on regular basis.

**33.** The Tribunal, however has failed to appreciate the aforementioned facts and has rather relied upon the language of the appointment orders which mentioned that the appointment of the petitioners was made on contractual basis. The Tribunal has also relied upon the language in the advertisement according to which the advertisement was issued for walk-in-interview. The Tribunal has, thus, concluded that since the advertisement was not issued for regular appointment and the appointment order of the petitioners itself mentioned that their appointment was on contractual basis, the petitioners' appointment cannot be termed to be regular appointment.

**34.** The aforesaid finding recorded by the Tribunal, in our opinion, is erroneous. The reasoning given by the Tribunal for not accepting the claim of the petitioners is also not tenable. We have already discussed the provisions of the Service Rules, 1967 which did not provide for any specific mode of selection, that is to say, as to whether selection will be based on interview or written

examination or on both. The Service Rules, 1967 only provide that the post of Staff Nurse is to be filled in by way of direct recruitment from amongst those who fulfill the requisite educational qualification and the age criteria by way of selection. In the instant case, as already recorded above, the petitioners' educational qualification and age criteria has never been questioned by the respondents. The only case put-forth by the respondents, which has been accepted by the Tribunal, is that the appointment orders of the petitioners mentioned that their appointment was made on contractual basis. We do not find ourselves in agreement with the Tribunal in recording such a finding for the reasons already given above. In our opinion, the impugned judgment of the Tribunal so far as it relates to petitioner Nos.1 to 8 is not sustainable.

**35.** For the discussion made and the reasons given above, the writ petition is disposed of in the following terms:

a) In respect of petitioner Nos.1 to 8, the writ petition is allowed and it is directed that these petitioners shall be treated to have been appointed on the post of Staff Nurse on regular basis and accordingly will be entitled to all the benefits applicable to a regularly appointed incumbent, including the benefit of seniority, further promotions, if any, benefit of annual increments, if any and the benefit of ACP and selection grade or other time bound pay scales, if any.

b) In respect of petitioner Nos.9 and 10, the writ petition stands dismissed. However, considering their long

continuance on the post of Staff Nurse, the respondents will consider them for regularization in service in accordance with law, with expedition.

c) The pay/salary of the petitioner Nos.1 to 8 shall be fixed in the regular scale of pay which is available to a regularly appointed incumbent on the post of Staff Nurse and such pay/salary fixation shall be made by the competent authority of the respondents within a period of six weeks from today and further, they shall be entitled to draw their salary/pay in the regular scale of pay only from the date of fixation of their pay/salary under this order.

d) There will be no order as to costs.

**(AMIT BORKAR, J.)**

**(CHIEF JUSTICE)**