IN THE HIGH Court OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12091 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DEVAN M. DESAI

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Approved for Reporting	Yes	No

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STATE OF GUJARAT
Versus
NATVARBHAI RAYSINGBHAI HARIJAN & ANR.

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Appearance:
MR S.J. DESAI, AGP for the Petitioner(s) No. 1
MR DIPAK R DAVE(1232) for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE DEVAN M. DESAI**
Date : 15/06/2026
JUDGMENT

1. Heard learned AGP Mr. S. J. Desai for the petitioner and learned advocate Mr. Dipak Dave for the respondent. Though served, none appeared for respondent No.2. Perused the record.

2. By way of this petition, under Article 226 of the Constitution of India, 1950, the petitioner has prayed to quash and set aside the impugned judgment and award passed below Exh.44 in Reference (T) No.732 of 2006 on

2.4.2018 by learned Presiding Officer, Labour Court No.2, Godhra.

3. Learned AGP for the petitioner – State has submitted that respondent No.1 – workman was working as a Rojamdar – Chowkidar since 1982. The respondent No.1 was discharged from his duties in the year 1989. It is submitted that respondent No.1 did not prove that he had worked for more than 240 days prior to the year from his termination. It is submitted that as per the attendant register, the employee had worked for NIL days in the year 1983, 10 days in the year 1985, 70 days in the year 1986 and NIL days in 1987-88. The learned Labour Court has committed an error by not relying upon the said evidence and held that the employee has worked for 240 days in last five years of his termination. The work of employee was seasonal, as and when requirements arose, employee's services were taken. Therefore, there was no recruitment of employee after following due procedure of Government. There is no breach of the provisions of section 25F of the

Industrial Dispute Act, 1947 (for short, hereinafter referred to as `the Act'). It is also not established by the employee that no seniority list was maintained and junior to the responder No.1 - employee is taken on work by petitioner. The order of reinstatement with back wages is illegal and requires to be quashed and set aside. It is submitted that the respondent has completed 6 years of service with early age of superannuation. It is also submitted that there is a gross delay of 15 years in approaching the learned Labour Court by way of reference. No other submissions are made except the above.

4. Per contra, learned advocate for respondent No.1 has supported the findings of the learned Labour Court. It is submitted that employee was in services of petitioner since 1982 as daily wager. Service of employee was terminated by petitioner in the year 1989. It is submitted that the responder No.1 has attained the age of superannuation in the year 2025. It is submitted that the petitioner has failed to establish by placing a reliable and trustworthy evidence

such as; the muster roll. The muster roll which has been placed on record by petitioner was incomplete and was produced in piecemeal years. It is submitted that the basic requirement of pleading, completion of 240 days of continuous service has been established by respondent No.1 and therefore the onus to prove that the workman has not completed 240 days of continuous service shifts on the petitioner. It is submitted that petitioner has grossly violated the mandatory provisions of Section 25F of the Act by not giving one month's notice in writing including the reasons for retrenchment and one month wages for notice period. No other submissions are made except the above. Learned advocate for the respondent submitted that since employee has reached the age of superannuation in the year 2025, a reasonable lump-sum compensation may be considered looking at the number of years he has put in service.

5. Having considered the submissions canvassed by the learned advocates for the parties and on perusal of the

papers, the petitioner has also come out with a case that the respondent No.1 was appointed on a temporary employment and he was paid on daily basis. The core contentions of the learned AGP are two folds; (i) Non-completion of 240 days of service in preceding year of termination & (ii) the reference being hit by principles of delay, laches and acquiescence. There are line of decisions on the question of limitation. Provisions of Limitation Act, 1963 are not applicable to the reference made under Industrial Disputes Act, but delay in raising industrial dispute is definitely an important circumstance which the learned Labour Court should keep in view at the time of deciding the reference. The service of respondent No.1 was terminated in the year 1989. The onus to prove completion of 240 days of service preceding year of termination is undisputedly on the shoulder of the workman. It is the case of workman right throughout the reference that workman was not given identity card, attendance card, pay slips though demanded from petitioner. It is high to expect from a daily wager to produce documents of his completing 240

days of service before 12 months of his termination. The best available documentary evidence to establish whether the workmen has completed 240 days or not preceding 12 months is always with the employer. The employee has no source to prove that he has completed 240 days of service in absence of payslip and other material documents. The employer is therefore expected to produce documentary evidence such as attendance register, pay slips, muster roll etc. to nullify the claim of completion of 240 days of service. Therefore, the employee in absence of any evidence, is required to plead that he has completed 240 days of service through pleadings and oral deposition.

6. In the present case, attendance statement is produced by the petitioner which indicates that the employee has worked for 10 days in the year 1985 and 70 days in the year 1986. The year of termination is 1989. The petitioner has not produced any pay slips, salary statement, attendance statement, muster roll from 1986 till 1989. The muster roll which has been produced by the petitioner is

found to be incomplete. The evidence which has been relied upon by the petitioner is incomplete and not reliable. Therefore, relying upon such incomplete evidence, it cannot be presumed that the petitioner has proved that Respondent No.1 has not completed 240 days of service or workman has not established and proved that he has completed 240 days of service. In my view, on appreciation of the order impugned and the material placed on record, order of setting aside a dismissal decision is proper and legal.

7. As far as the question of limitation is concerned, learned Labour Court has discussed in detail that there is no specific provision of limitation in filing reference proceedings under the Industrial Disputes Act. Before venturing into aspect of delay in filing reference, it would be apposite to consider an important fact which has cropped up during the course of hearing that employee has attained the age of superannuation in the year 2025. In such scenario, the order of reinstatement of the employee

remains of an academic issue. In the case of ***State of Uttar Pradesh v. Krishna Murari Sharma in the case of 2025 LawSuit (SC), 1677,*** it has been held by Hon'ble Supreme Court that gross delay is a relevant factor in molding relief even if termination is held illegal and relief can be modified to lump-sum compensation in lieu of reinstatement and back wages. In paragraph No.13, Hon'ble Apex Court held as under:

> "13. Taking the entire circumstances into account, especially the fact that there was a 16 year delay in seeking a reference, we are of the opinion that a lump sum compensation of Rs.2,50,000/- (Rupees Two Lakhs and fifty thousand) would suffice. The order of the Labour Court as affirmed by the High Court are both set aside to the extent of reinstatement and award of back wages. While upholding the award regarding the illegality of the termination, reckoning the gross delay caused, a lump sum compensation of Rs.2,50,000/- (Rupees Two Lakhs and fifty thousand) would be paid to the respondent-workman within a period of two months from the date of receipt of certified copy of this order. If the said sum is not paid within the period stipulated, the State shall be liable to pay interest at the rate of 7% per annum from the date of expiry of the two- month period."

8. The question remains now as to what should be the method and manner of calculating lump-sum compensation

to a workman in lieu of reinstatement with or without back wages. Decision of the Hon'ble the Division Bench of this Court dated 9.5.2024 passed in Letters Patent Appeal No.908 of 2023 and allied matters in the case of ***Bhikhbhai Fatabhai Solanki v. Executive Engineer, Narmada Project Canal System*** is relevant for deciding a lump-sum compensation to respondent herein. In paragraph No.10 of the above cited decision, the Hon'ble Division Bench has proposed a method of calculating compensation. Applying the same proposition in the present case, respondent No.1 would fall in the first category as the employee was in the service of petitioner from 1982 to 1989. Therefore, the respondent No.1 shall be entitled to a lump-sum compensation of Rs.3,00,000/-. The petitioner herein shall pay a lump-sum compensation of Rs.3,00,000/- to respondent No.1 in lieu of reinstatement without back wages within a period of *six weeks* from the date of receipt of this order, failing which, the petitioner shall pay interest at the rate of 6% p.a. to respondent No.1 from the date of illegal termination till the date of attaining

superannuation.

9. The petition stands disposed of in above terms. Rule is made absolute to the aforesaid extent. No order as to costs.

(D. M. DESAI,J)

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Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: VATSAL KOTECHA(HC00352), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 18/06/2026 15:47:38