Order below Exh.2

(1) Read the application, perused the record and heard Ld. representative for the complainant i.e. sponsored union Sh. Vijli Karamchari Mahamandal as well as Ld. advocate for the respondents/ opponents. Complainant i.e sponsored union Sh. Vijli Karamchari Mahamandal has filed a complaint u/s 33 A on behalf of the employees, who were terminated by the respondent nos. 2 to 4 during pending proceedings and for ad-interim relief preferred this present application. Briefly the facts of the application are that the respondent no. 1 is an autonomous body and recognised as erstwhile G.E.B. and the respondent no. 2 to 4 are subsidiary electricity distribution companies and the concerned workers had been doing their duties as Vidhut Sahayak (Junior Assistant) for the last two to three years. During 2022 -2023 due to political dispute, allegations were made that the respondent companies had given appointments by committing corruption during online examination and for that chairman of respondent companies had conducted enquiry and held that there was no illegality. Further, without any independent evidence, the respondent companies had given the charge sheet on the basis of incidental and identical reports based on alleged police investigation. Further departmental inquiry was initiated after a very long span from the date of suspension and the departmental enquiry was handed over to the retired General Manager, who at present working as an advocate and the concerned employees were barred from any legal assistance. Further inquiry was initiated after a long time and employees were not given adequate opportunity and the departmental proceedings were held one sided with a predetermined mind for the termination of the employees and also the departmental proceedings were against the principle of natural justice. Further the concerned employees were terminated pending conciliation and through a letter written by union dtd. 20-02-2024, it is on record that conditions of service shall be maintained during pending

conciliation and respondents had also given undertaking regarding this. Further the conciliation proceedings had been concluded on 27-03-2025 and a petition was moved before Hon'ble High Court of Gujarat for maintaining the status quo with regard to conditions of service till final order in reference. Further when advance copy of the petition was served, the respondents terminated the service of the concerned employees on 02-04-2025. Therefore, the dismissal order was passed deliberately with illegal motive and is violating Section 33A of I.D. Act. Further, the respondents ought to get the permission under Section 33(1)(b)of I.D.Act Further, respondents were under obligation to maintain status quo and deliberately the termination order was passed in violation of Section 33 A. Further until the report is not submitted to the appropriate Government and 14 days period is not over, the conciliation proceedings will remain to be continued. Further with regard to the same dispute, the sponsored union has raised a charter of demand for other employees on 10-03-2025 for orders regarding disputed duties and the conciliation officer had issued notice on 19-03-2025 and the first date of hearing was fixed on 17-04-2025. Therefore, the respondent companies were in obligation to maintain the status quo. Further as per para 23 to 30 of Lokmat News Paper v. Shankar Prasad, 1996(6) SC 104, Hon'ble Apex Court has held that the service conditions of the concerned employees can not be changed during pending conciliation or proceedings without prior permission and for 7 days the conciliation proceeding is in existence, if there is failure in reference. Further, according to the judgment of Apex Court of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ramgopal Sharma, the effect of non-approval of the order of discharge or dismissal would have the effect that the employee continued to be in service as if the order was never passed and the respondents had breached the mandatory provisions of law and the complainant had strong case and the respondents had passed deliberate

illegal orders by arbitrary means and adopted unfair labour practice. Further, the complainant has prima facie case and issue regarding balance of convenience and irreparable loss are also in favour of them. Further if the interim relief be allowed then the main relief will not be satisfied and the interim relief application is prima facie maintainable. The complainant in its interim relief application requested to allow the application and to pass an order against the respondents for maintaining the status quo regarding service conditions from 27-03-2025.

(2) After filing of the complaint, the notices were issued to the respondents and the said notices were duly served to the respondents. Respondents had given presence through their advocate and Ld. advocate for the respondents had submitted Vakalatnama and objection was not raised by the sponsored union in this regard and in view of Section 36(4), the Vakalnama is taken on record vide Exh.9. At Exh.12, the respondent nos. 2 to 4 on behalf of all respondents submitted the reply to this ad-interim application. In this complaint, the complainant submitted a list of documents vide Exh.4 and at Exh.5, an authority letter has been submitted by the concerned employees in favour of Sh. A.G. Mirza, Sr. Sec. Gen. of Shri Vijali Karmachari Mahamandal Union for representing them. I have gone through all the documents submitted from the side of the complainant and perused the record.

(3) At Exh.12, reply to the ad-interim application is on record and the respondents denied the contentions of the complainant's claim in detail and further submitted that the complainant has no locus standi to file the present complaint and the Hon’ble Tribunal has no jurisdiction to decide this complaint. Further submitted that the relationship between applicant and respondents came to an end by order dated 02-04-2025. Hence there is no relationship of master and servant and hence, interim relief application is not maintainable. Further, the composite complaint on behalf of 50

employees and interim relief application has been filed by the union and not by the affected employees and the termination orders were also issued against individual employees. Therefore, the complaint as well as interim relief application is required to be rejected. Furthermore, after holding departmental proceedings individually against the employees, the employees have been terminated from the service. Furthermore, the concerned employees in the present complaint are tainted candidates who, by adopting illegal and unknown means in the selection process, fraudulently got their place in merit list and when the entire scam was unearthed and after holding departmental proceedings individually in accordance with law, the concerned employees were terminated. Further, the union raised the dispute which can not be said to be an industrial dispute and the charter of demand can not be termed as an industrial dispute and in fact with a view to impede the ongoing inquiry and just to create embargo so as to invoke provisions of Section 33 A, absolute false, frivolous and non-existent dispute challenging the chargesheet has been raised by the union. Further, the concerned employees have not been terminated pending conciliation and no undertaking was given by the opponents for maintaining status -quo. Further the petition was moved by the complainant before the Hon'ble High Court of Gujarat. However the petition was not moved until the termination orders were passed and the service of the employees were terminated on 02-04-2025. Further, the present employees are neither concerned nor connected with the pending dispute in the said conciliation proceedings, the dispute can not be said to be having any direct or indirect connection with the termination order. Further, after show cause notice was issued and the chargesheet was issued against the concerned employees, the union raised the dispute challenging the chargesheet which thus cannot be said to be either concerned or connected dispute but it can be said that just to get illegal benefit of provisions of Section 33. Further, the termination

order was not having any nexus with the petition pending and as per proceedings, not only the present employees but all other employees involved in the scam, about 129 in numbers, have been terminated after full-fledged departmental proceedings held in accordance with law. Further, much after the termination order the complainant had withdrawn the petition on 09-04-2025 and another petition challenging termination order on the ground of violation of Section 33A was filed and Hon'ble High Court was not inclined to entertain the petition, the same has been withdrawn with a view to file appropriate proceedings under section 33A and the said order was passed on 23-04-2025 and thereafter, the present complaint has been filed. Thus, it is very clear that the complainant has not come with clean hands. Further, the conciliation proceedings had ended on 27-03-2025 and thus there was no pendency of proceedings and the said proceedings had nothing to do with the present termination order and the employees were neither concerned nor connected with the pending dispute nor there was any pendency of dispute as alleged. Further the aim and object of Section 33 is to protect victimization of an employee and to protect the employees from illegal termination. In the present case the contractual employees have been found guilty of unfair means and they are found guilty of playing fraud and to get merit and find themselves in the merit list by playing fraud with the other candidates and after issuance of show cause notice charge sheet was issued against the employees and much after the charge sheet, so called dispute was raised and it can not be said to be an industrial dispute. Further after conciliation proceedings were over, for 14 days, the conciliation proceedings can be said to be in vogue and with a view to subterfuge the disciplinary proceedings, deliberate, false and misleading attempts were made by raising another dispute which is absolutely illegal, arbitrary and can not be said to be industrial dispute and what is raised in the said notice was that the suspended employees have

been asked to undertake the work and in fact the said dispute is under pre conciliation and the said dispute can not be said as an industrial dispute within the meaning of Section 2(k) of I.D. Act. Further, the legislature has permitted only the employee to file the complaint under Section 33 A. Thus, the complainant has no prima facie case and there was no dispute pending on the date when the termination was passed. Further, there is no provision under which by way of interim relief, status quo ante can be granted. Further the union has no cause in the matter and can not be said to be an aggrieved person. Further, in through investigation lodged in pursuance of the FIR no. 11210015230082/2023 by Surat City DCB Police Station under Section 418, 419, 420 and 120B of IPC and Section 66 and 66B of the Information & Technology Act, it was found that for the centralized recruitment of Vidhut Sahayak (Junior Assistant) for total 2156 vacant posts, the concerned employees participated in the selection process and it was revealed that the concerned employees contacted agents who are also co accused along with the concerned employees in the aforesaid FIR, the concerned employees made a show that they are attending the examination while sitting in front of the computer monitor and giving the examination but the answers were being typed through another computer by using screen splitter, ammyy admin, anydesk, teamviewer etc., and by using remote access software, from outside the centre the computer was being operated and answers were given from the said computer. Further, the computer logged data as well as FSL report also clearly point out guilt of the concerned employees and thus the concerned employees are guilt of fraud in securing merit in the selection process and the Crime Branch Police Station, Surat filed chargesheet against the concerned employees and all other responsible persons and filing the chargesheet in the competent court of law shows prima facie criminal involvement of the concerned employees. Further inquiry officer was appointed and the concerned

employees were given ample opportunity in the departmental proceedings and the delinquent also engaged the defence assistant to represent their case and the charges against the employees were proved during inquiry proceedings. Further the employees shared admit card with the agents and in the process of securing appointment by fraud, a huge amount was also given to the agents/ middleman who arranged the examination of the employees. Further the tainted candidates having secured the appointment by adopting unfair means are since identified, the opponents have not cancelled the entire selection process but have weeded out tainted candidates and they have been thus removed from the service by way of the impugned order of termination and the opponents can maintain termination order only on the ground of loss of confidence. Further in case the employees succeed ultimately at the final hearing of the complaint, restitution would be possible. However, in the reverse case, restitution would not be possible and requested to reject the interim relief application. Further in view of impeccable evidence which are forming part of charge sheet and prima facie case with regard to securing appointment by fraud is made out against the employees and since it is not a case of misconduct while in service and it is a case of getting appointment by fraud and the same is sufficiently proved by preponderance of probability and evidence and therefore, it is not open for the employees to contend that the police charge sheet papers cannot be relied upon. Further the opponents have passed absolutely just, legal and proper order and there is no violation of principles of natural justice and there is no violation of Article 14 and 21 of the Constitution and the employees are the tainted candidates identified by reputed agency of the state machinery and documentary evidence can not be wiped out and merely because criminal case is pending which may take years together, employees can not contend that they can not be punished until the trial has ended. Further, the charges against the employees are

grave and it was relating to pre-appointment misconduct which prima facie shows appointment of the employees ab initio void. Therefore, requested to reject the interim application.

(4) Learned representative Sh. Mirza of the sponsored Trade Union submitted his oral arguments and in support of his arguments he relied on the following citations of Hon'ble Courts:-

1. 1996(6) Supreme 104, M/s. Lokmat Newspaper Pvt. Ltd. v. Shankarprasad.
2. 2002 (92) FLR 667 (Supreme Court), Jaipur Zila Sahkari Bhoomi Vikas Bank Ltd. v. Shri Ram Gopal Sharma and Ors.
3. Order passed by Hon'ble High Court of Gujarat in SCA-4701/2025 to 4779/2025.

(5) Learned Counsel for the respondents Sh. D.R. Dave submitted his oral arguments and in support of his arguments relied on the following citations of Hon'ble Courts.

1. Delhi Cloth and General Mills Company Ltd. v. Rameshwar Dayal, 1961 AIR (SC) 689
2. Rajasthan State Road Transport Corporation and Anr. v. Satya Prakash, 2013 (9) SCC 232
3. Managing Director, Nekrtc Karnatka v. Shivasharnappa, 2017 (16) SCC 540
4. State of Haryana v. Suman Dutta, 2000 (10) SCC 311
5. State of Uttar Pradesh v. Sandeep Kumar Balmiki, 2009 (17) SCC 555
6. Steel Authority of India Ltd. v. Union of India, 2020 Lawsuit (Chh) 302
7. Union of India v. Modiluft Ltd., 2003 (6) SCC 65
8. Workmen of Firestone Tyre and Rubber Co of India Pvt. Ltd. v.

Management, 1973 (1) SCC 813

9. Torrent Power Ltd. & Anr. v. Chelabhai Nathabhai Luhar & Ors., 2018 (1) GLR 392
10. State of West Bengal v. Baishakhi Bhattacharyya (Chatterjee) and Ors., 2025 INSC 437
11. Hazrat Surat Shah Urdu Education Society v. Abdul Saheb, 1988 (5) SLP 768

(6) After completion of the arguments from the side of the respondents, the Ld. representative of the trade union in rebuttal submitted a reply to the opponents arguments vide Exh. 16 and at Exh. 17 submitted the short notes on facts and law points which have been considered. Further, the Ld. representative of the trade union cited the following judgments of Hon'ble Courts;

1. 2002 (1) LLN 288, in the High Court of Karnataka between B.D.K. Process Controls (Pvt.) Ltd, Hubli & Anr and Bharatiya Mazdoor Sangha, Dharwad
2. 2002(95) FLR 600, In Rajasthan High Court between Darshan Singh and The Judge, Labour Court and Ors.
3. Writ Petition no. 4832 of 1984, in the high Court of Karnataka between Darshak Ltd. and Industrial Tribunal & Anr.
4. Special Civil Application no. 12035 of 2003 between Talala Gram Panchayat v. Bharatkumar Laldas Agravat & 22
5. Special Civil Application no. 5324 of 2001 between Administration v. Shingalal Pareshkumar Ramniklal
6. 2002 (92) FLR 555, in Hon'ble Supreme Court between Tamil Nadu State Transport Corporation and Neethivilangan
7. 2024 INSC 873, in the Supreme Court of India, Satyendra Singh v. State of Uttar Pradesh & Anr.

8. Writ Petition no. 8562 of 2015, In the High Court of Judicature at Bombay titled as M/s. Hindustan Level Employees Union v. M/s. Hindustan Unilever Limited.

I have perused all the judgments of Hon'ble Supreme Court and Hon’ble High Courts submitted from both sides with due regards.

(7) As per the facts of this case/complaint, it is admitted fact that the sponsored trade union namely Sh. Vijli Karamchari Mahamandal is representing the employees of respondents and filed this present complaint against the respondents under Section 33A of Industrial Dispute Act, 1947. It is pertinent to note that before preferring this complaint, the Appropriate Government had referred the dispute between the concerned parties before this Tribunal and that reference is pending as Reference (IT) 21-2025 and that reference has been sent with the following demand that the departmental inquiry conducted by the Gujarat Energy Development Corporation Ltd. & its subordinate companies against the legally appointed employees is illegal and unreasonable due to political dispute and on the incidental and identical facts of FIR and for that it is against the principles of natural justice and all orders made in the name of punitive action should be cancelled with immediate effect. Further to declare the employees are legally on duty from the date of suspension till the final outcome of the dispute and whether they are entitled or not for all benefits including salary, allowances and seniority along with five times the penalty?

(8) Ld. counsel Sh. D.R. Dave for the respondents has taken an objection and contended that the complaint as well as ad-interim application are not maintainable on the ground that the employees who were terminated by the respondents have only right to file complaint under Section 33A of the IT Act and it is clearly written in this Section that if the employer contravenes the provisions of section 33 during the pendency of proceedings then only

the aggrieved employee is entitled to file a complaint in writing but in this case a composite complaint on behalf of 50 employees has been filed by the union and the termination orders were also issued against individual employee. Therefore, requested to reject the complaint as well as this interim application.

On the other hand the Ld. representative Sh. Mirza for the complainant union urged that during pending conciliation proceedings, the concerned employees were dismissed and during pending inquiry, demand was raised by the union and charter of demand was issued by the union. The dispute was admitted in the conciliation proceedings and accordingly notices were issued to the respondents. Further the enquiry proceedings were concluded and the conciliation proceedings were held on 27-03-2025 but the conciliation proceedings were not concluded and the order of dismissal from service was contrary to the provisions of Section 33 of Industrial Dispute Act. Further submitted that during pending reference or pending proceedings, the union has right to file a complaint, if any condition of service is breached by the employer and in support of his arguments cited the judgment passed by Hon'ble Karnataka High Court in the matter of B.D.K. Process (Supra)

(9) Hon'ble Karnataka High Court in B.D.K. Process (Supra) has held that if the union has been authorised by the workman to make a complaint then that complaint is maintainable and in this present case on hand, the concerned employees have given an authority letter at Exh.5 to the Union for representing their claim and it reveals from the record that the union has filed the complaint and interim application on behalf of the concerned employees and it also reveals from the record that all the 50 affected employees had marked their signatures on the complaint as well as on the ad-interim application. Therefore, arguments submitted by the Ld. counsel for non maintainability of the

complaint as well as ad-interim application on the ground that the individual affected employee has only right to file this complaint and ad- interim application is not tenable in the eyes of law.

(10) Ld. representative Sh. Mirza in his arguments submitted that during pending conciliation proceedings, the concerned employees were terminated and it is mandatory provision of law that prior permission from the Tribunal is must before making any change in service conditions and in this case the respondents had terminated the concerned employees during pending conciliation proceedings. Further submitted that a letter was written by the union on 20-02-2024 and it is on record that conditions of service shall be maintained during pending conciliation and respondents had also given undertaking regarding this. Further urged that the conciliation proceedings had been concluded on 27-03-2025 but it cannot be said to be termination of conciliation proceedings until the report is not submitted to the appropriate Government and 14 days period is not over. Further submitted that with regard to the same dispute, the union had raised a charter of demand for other employees on 10-03-2025 for orders regarding disputed duties and the conciliation officer had issued notice on 19-03-2025 and the first date of hearing was fixed on 17-04-2025. Therefore, the respondent companies were in obligation to maintain the status quo. Further, a petition was filed before Hon'ble High Court of Gujarat for maintaining the status quo with regard to conditions of service till final order in reference and advance copy of the petition was served but in spite of this , the respondents had terminated the service of the concerned employees on 02-04-2025 deliberately and with illegal motive. Ld. representative Sh. Mirza in support of above arguments referred to the judgment of Hon'ble Supreme Court delivered in the matter of M/s. Lokmat Newspapers Pvt. Ltd. (Supra) and order passed by Hon'ble Rajasthan High Court in the matter of Darshan Singh (Supra).

(11) According to the reply filed by the respondents and as per the arguments of Ld. counsel for the respondents, there was no pending conciliation proceedings and the termination order was not having any nexus with the pending petition and total 129 employees, who were involved in the scam, had been terminated after full-fledged departmental proceedings held in accordance with law. Ld. counsel for the respondents in his arguments submitted that when the conciliation proceedings were over and before submitting the dispute for reference, the concerned employees were terminated. Therefore, there is no breach of section 33A and the complainant had withdrawn the writ petition pending before Hon'ble High Court on 09-04-2025 and another writ petition challenging termination order on the ground of violation of Section 33A which was filed in the Hon'ble High Court was also withdrawn with a view to file appropriate proceedings under section 33 A. Further submitted that the conciliation proceedings had ended on 27-03-2025 and thus there was no pendency of proceedings and the said proceedings had nothing to do with the present termination order and the employees were neither concerned nor connected with the pending dispute.

(12) Hon'ble Rajasthan High Court in Darshan Singh (Supra) has held in para 5 that " In view of joint reading of Section 33(1)(a) and Section 33-A, it appears that the intention of the legislation was very clear that no adverse order can be passed by the employer when the matter is pending even at the level of Conciliation Officer or up to the level on National Tribunal including before Labour Court and in case any adverse order is passed, Labour Court itself can adjudicate upon grievance of employee treating it as dispute referred to under the provisions of Act of 1947.

(13) On perusal of the record, it reveals that there is no dispute regarding status of employer and employee between parties to this present complaint and it in on record that the concerned employees were terminated on 02-04-2025

and it is also on record that at that time the union had preferred a writ petition before Hon'ble High Court of Gujarat but later on that writ petition was withdrawn. In view of the judgment of Hon'ble Supreme Court of M/s. Lokmat Newspapers Pvt. Ltd. (Supra) and according to Section 20 (2) of I.D. Act, a conciliation proceeding shall be deemed to have concluded where a settlement is arrived at, when a memorandum of the settlement is signed by the parties to the dispute and where no settlement is arrived at, when the report of the conciliation officer is received by the appropriate Government or when the report of the Board is published under section 17. Therefore, until the report of the conciliation officer is not received by the appropriate government, it can not be said that the conciliation has been concluded. On perusal of the record, at Annexure-1 failure report of conciliation and reference on behalf of Appropriate Government is on record, which is duly signed and issued on 23-04-2025 by Deputy Secretary of Labour, Skill Development and Employment Department, Secreterate, Gandhinagar and copy of the same was forwarded for publication. As per the documents submitted from the side of the complainant at Annexure 1, the conciliation report could not be said to be received by the appropriate government before 02-04-2025 and the employees were terminated in spite of this fact, then according to law the complainant is entitled to file a complaint under Section 33 A of the ID Act. Therefore, arguments submitted from the side of the respondents for non maintainability of this complaint is not tenable in the eyes of law. **In this case the concerned employees were terminated during pending conciliation proceedings and prior approval was not taken by the respondents. Therefore, the respondents had committed a breach of Section 33 (2)(b) of I.D. Act and therefore, prima facie case is in favour of the complainant. Looking to the facts and circumstance of this case, now this question is required to be decided whether the employees who were terminated**

during pending conciliation or if the respondents had not complied with the provisions of Section 33(2)(b) of ID Act, the services of terminated employees can be restored at this initial stage while adjudicating interim relief application?

(14) Ld. representative of the union mainly relying on the judgment of Apex Court of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. (Supra) and urged that if the employees were terminated during pending proceedings then it is a breach of Section 33 of ID Act and the respondents were required to take approval and the effect of non-approval of the order of discharge or dismissal would have the effect that the employee be continued in service. Therefore, requested to allow this application.

Per-contra, Ld. counsel for the respondents in his arguments submitted that if the respondents had not strictly followed the provisions of Section 33(2)(b) then also the concerned employees are not entitled for reinstatement as full fledged inquiry was conducted and full opportunity was given to the concerned employees and they were terminated for the pre-appointment conduct and if the employee had taken the employment by conducting fraud with the establishment and if the investigating agency had filed charge sheet in the concerned court, then the tainted employees are not entitled for reinstatement and they are not entitled for any relief merely on the ground that requirement of Section 33(2)(b) has not been compiled with and in support of his arguments referred the judgments of Hon'ble Supreme Court passed in the matter of Rajasthan State Transport (Supra) and Managing Director, NEKRTC Karnatka (Supra). Further submitted that the concerned employees who got service by conducting fraud with the establishment and if they have been terminated for loss of confidence then no inquiry is required at all and in support of this argument cited the judgment of Hon'ble High Court of Gujarat passed in the matter of Torrent Power Ltd. (Supra).

(15) Hon'ble Supreme Court in Jaipur Zila (Supra) has held as under;

> "The order of dismissal or discharge passed invoking Section 33(2)(b) dismissing or discharging an employee brings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end de jure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33A challenging the order granting approval on any of the grounds available to him.

In this present case, as discussed in para 13, the concerned employees were dismissed during pending conciliation and according to the judgment of Jaipur Zila (Supra), order of dismissal or discharge being incomplete and inchoate until the approval is obtained and cannot effectively terminate the relationship of the employer and employee and that if the approval is not accorded by the tribunal, the employer would be bound to treat the respondent as its employee. But Hon'ble Supreme Court in Rajasthan State Road Transport Corp. (Supra) has observed in para 11 that the Constitutional Bench in Jaipur Zila (Supra) was only concerned with the interpretation of Section 33(2)(b) of IT Act and has held in para 19 that:

> 19. In the present case, the Tribunal accepted that during this very short span of service as a daily wager the respondent had committed the misconduct which had been duly proved. ***Having held so, the Tribunal was expected to dismiss the Complaint filed by the respondent. It could not have passed the order of reinstatement with continuity in service in favour of the respondent on the basis that initially the appellant had committed a breach of Section 33 (2) (b) of the Act.*** It is true that the appellant had not applied for the necessary approval as required under that section. That is why the Complaint was filed by the respondent under Section 33A of the Act. That Complaint having been filed, it was adjudicated like a reference as required by the statute. The same having

been done, and the misconduct having been held to have been proved, now there is no question to hold that the termination shall still continue to be void and inoperative. The de jure relationship of employer and employee would come to an end with effect from the date of the order of dismissal passed by the appellant. In the facts of the present case, when the respondent had indulged into a misconduct within a very short span of service which had been duly proved, there was no occasion to pass the award of reinstatement with continuity in service. The learned Single Judge of the High Court as well as the Division Bench have fallen in the same error in upholding the order of the Tribunal.

Similarly in Managing Director, NEKRTC Karnataka (Supra), Hon'ble Supreme Court in para 5 and 6 has held as under;

5. ***In the present case, the High Court interfered with the punishment merely on the ground that the requirement under Section 33(2)(b) of the Act had not been complied with and prior approval had not been taken. The same, as already held by this Court, could not have authorized the High Court to interfere with the punishment imposed without an adjudication on the validity of the dismissal.*** In the present case, such an adjudication had already been made and, therefore, the issue of the validity of the dismissal of the workman must be understood to have been gone into and decided. In such a situation, the High Court ought not to have interfered with the punishment imposed without considering the findings of the Labour Court on the correctness of the charges brought against the workman. The said aspect of the order of the High Court has, however, not been assailed by the workman. The aforesaid part of the order may, therefore, be understood to have been accepted by the workman. In the above situation, the remaining part of the order i.e. the High Court interfering with the punishment imposed would clearly be contrary to the view expressed by this Court on the issue in Management of Karur Vysya Bank Ltd. (supra).

6. ***We, therefore, arrive at the conclusion that the High Court was not at all justified in passing the impugned order which is one of reinstatement with partial back-wages (25%). We accordingly interfere with the order of the High Court and restore the order of the Labour Court dated 25th May, 2011.***

(16) Before discussing the factual aspects of the matter, certain legal provisions and settled law with regard to temporary injunction are required to be taken into consideration that temporary injunction can be granted if the case is covered by the three principles, namely, (1) on making out a prima facie case, (2) on showing balance of convenience in applicant's favour, in that

the refusal of the injunction would cause greater inconvenience to him and (3) whether on refusal of the injunction he would suffer irreparable loss. Granting an injunction is a matter of discretion and in its exercise the Court has to satisfy itself whether the applicant has a triable case. Before invoking the jurisdiction of the Court to seek temporary injunction the applicant is bound to show that he has a legal right and that there was an invasion of his right.

(17) Ld. representative of the trade union on behalf of concerned employees urged that the respondents had breached the provisions of Section 33 of the ID Act. Therefore, the dismissal order is void ab initio. Further, submitted that Tribunal has power to grant interim relief and when two cases are pending before conciliation authority then prima facie case and balance of convenience are in favour of the concerned employees. Further, on the initiation of a political goal, the opponent had suspended the concerned employees on false allegations then the question of irreparable loss is also in favour of the employees. Therefore, requested to allow the ad-interim application and in support of his arguments cited the orders passed by Hon'ble High Court of Gujarat in Sp. Civil Application no. 5324/2001 and in Sp. Civil Application no. 12035/2003.

On the other hand Ld. Counsel for the respondents in his arguments submitted that the reinstatement of the terminated employees can not possible at interim stage and even if prima facie case is favour of the concerned employees then balance of convenience and irreparable loss are not in favour of them and during conclusion of reference if the concerned employees succeed the restitution is possible but at this initial stage and without appreciating evidence, if the concerned employees are reinstated in the service and they will not succeed then this will cause irreparable loss to the respondents and being the tainted employees, balance of convenience is also not in favour of the terminated employees.

(18) In this instant case, it is not the disputed fact that FIR no. 11210015230082/2023 was lodged by Surat City DCB Police Station under Section 418, 419, 420 and 120B of IPC and Section 66 and 66B of the Information & Technology Act with regard to the centralized recruitment of Vidhut Sahayak (Junior Assistant) for total 2156 vacant posts and the concerned employees had participated in the selection process. Further, charge sheet against the concerned employees and other persons were filed by the investigating agency alleged that the concerned employees made a show that they are attending the examination while sitting in front of the computer monitor and giving the examination but the answers were being typed through another computer by using screen splitter, ammyy admin, anydesk, teamviewer etc. Therefore, at this initial stage it can not be said that the concerned employees had no involvement in the alleged crime. Further, as averred in the ad-interim application that the departmental inquiry conducted by the respondents was based on incidental and identical reports of police investigation and adequate opportunity was not given to the concerned employees and the departmental proceedings were held with a predetermined mind for the termination of the employees and also the departmental proceedings were against the principle of natural justice are not the triable issues which are required to be decided at this initial stage while adjudicating the interim relief application. Similarly it is also a triable issue that the departmental inquiry is not required in this particular case when the employees were terminated on the ground of loss of confidence.

(19) **Hon'ble High Court of Gujarat in Sp. Civil Application no. 12035-2003 confirmed the order passed in Sp. Civil Application no. 5324/2001 wherein the Hon'ble High Court had not inferred with the order of either to pay 50% of wages or reinstate the workmen by the Tribunal. I have gone through the order of Hon'ble High Court of Gujarat with due respect and in that particular case the connected workmen were**

continuous in service for more than 240 days and performing work of collection of octroi and during pending conciliation, the State abolished the octroi and for that the workmen were terminated. But in the instant case on hand and as per documents submitted, the concerned employees were terminated for their pre- appointment misconduct for getting the service by unfair means. Therefore, order passed in Sp. Civil Application no. 12035-2003 is not helpful to the claim of the complainant.

(20) In Delhi Cloth And General Mills Co. (Supra), Hon'ble Supreme Court has held as under;

> It is clear that in case of a complaint under s. 33-A based on dismissal against the provisions of s. 33, the final order which the tribunal can pass in case it is in favour of the workman, would be for reinstatement. That final order would be passed only if the employer fails to justify the dismissal before the tribunal, either by showing that proper domestic inquiry was held which established the misconduct or in case no domestic inquiry was held by producing evidence before the tribunal to justify the dismissal: See Punjab National Bank Ltd. v. All- India Punjab National Bank Employees' Federation (2), where it was held that in an inquiry under s. 33-A, the employee would not succeed in obtaining an order of reinstatement merely by proving contravention of s. 33 by the employer. After such contravention is proved it would still be open to the employer to justify the impugned dismissal on the merits. That is a part of the dispute which the tribunal has to consider because the complaint made by the employee is to be treated as an industrial dispute and all the relevant aspects of the said dispute fall to be considered under s. 33-A. Therefore, when a tribunal is considering a complaint under s. 33-A and it has finally to decide whether an employee should be reinstated or not, it is not open to the tribunal to order reinstatement as an interim relief, for that would be giving the workman the very relief which he could get only if on a trial of the complaint the employer failed to justify the order of dismissal. ***The interim relief ordered in this case was that the workman should be permitted to work: in other words he was ordered to be reinstated; in the alternative it was ordered that if the management did not take him back they should pay him his full wages. We are of opinion that such an order cannot be passed in law as an interim relief, for that would amount to giving the respondent at the outset the relief to which he would be entitled only if the employer failed in the proceedings under s. 33-A.*** As was pointed out in Hotel Imperial case (AIR 1959 SC 1342) ,ordinarily, interim relief should not be the whole relief that the workmen would get if they succeeded finally. ***The order therefore of the tribunal in this case***

allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must therefore be set aside. We therefore allow the appeal, set aside the order of the High Court as well as of the tribunal dated May 16, 1957, granting interim relief.

Similarly Hon'ble Supreme Court in State of Haryana (Supra) and in Anup Engineering Ltd. (Supra) has taken the same view that reinstatement at interim stage is not permissible.

(21) In the instant case on hand there is a request to pass an order for maintaining the status quo regarding service conditions from 27-03-2025 as an interim relief and there is no document on record which suggests that the respondents had given any undertaking for maintaining conditions of service during pending conciliation. According to the judgment passed by Hon'ble Supreme Court in the matter of Delhi Cloth And General Mills Co. (Supra), final order would be passed only if the employer fails to justify the dismissal before the tribunal, either by showing that proper domestic inquiry was held which established the misconduct or in case no domestic inquiry was held by producing evidence before the tribunal to justify the dismissal and the order therefore of the tribunal in this case allowing reinstatement as an interim relief or in lieu thereof payment of full wages is manifestly erroneous and must therefore be set aside. In this instant case status quo regarding service conditions from 27-03-2025 as an interim relief is demanded which is nothing but a request of reinstatement and according to law a final relief can not be granted in interim stage and in view of judgment of Delhi Cloth And General Mills Co. (Supra), reinstatement is not permissible at this interim stage.

(22) As discussed in para 13, there is prima facie case in favour of the concerned employees but the concerned employees were terminated on the ground of their involvement in getting the service by unlawful means and for that if this ad-interim relief application is allowed than this will cause more in-convenience to respondents rather than

concerned employees. Further, breach of section 33(2)(b) per se is not the sole ground for reinstatement as held by Hon'ble Supreme Court in Rajasthan State Road Transport Corp. (Supra). Further, restitution i.e. reinstatement with all benefits is possible in this case, if the respondents fail to justify the termination. Therefore, if this application is not allowed then this will not cause irreparable loss to the concerned employees. In view of this the following order is passed.

Order

- The ad-interim relief application preferred by the complainant on behalf of aggrieved employees is hereby rejected.
- No order as to cost.
- Order passed and pronounced today on 02-06-2025.

Place: Kalol

Dated: 02-06-2025

Digitally signed by
RAJENDER SINGH
at Kalol
on 02/06/2025 12:38:42 IST.

Rajender Singh
(Judge Code- GJ01085)
Member, Industrial Tribunal,
Ahmedabad at Kalol