

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 5611 of 2026****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE DEVAN M. DESAI**

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Approved for Reporting	Yes	No
		✓
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DEPUTY CONSERVATOR OF FOREST

Versus

MULJIBHAI HUNDIYABHAI VASAVA

Appearance:

MR SIDDHARTH DESAI, AGP for the Petitioner(s) No. 1

CORAM: HONOURABLE MR. JUSTICE DEVAN M. DESAI**Date : 22/06/2026****JUDGMENT**

1. The present petition is filed by the petitioner-employer under Article 227 of the Constitution of India, 1950 seeking following relief.

“(A) YOUR LORDSHIPS may be pleased to admit and allow the present petition;

(B) YOUR LORDSHIPS may be pleased to quash and set aside the order passed in Reference (L.C.B.) No.10 of 2017 dated 23.09.2025 (Annexure-A) ;

(C) Pending the hearing Your Lordship be pleased to stay the order passed in Reference (L.C.B.) No.10 of 2017 dated 23.09.2025 (Annexure-B) ;

(D) Be please to pass any further orders.”

2. Heard learned AGP Mr. Siddharth Desai for the petitioner.

3. At the request and consent of learned AGP for the petitioner, the present petition is taken up for final disposal.

4. The brief facts of the case are as under:-

4.1. The respondent-employee was working under the establishment of the petitioner-employer on the post of Watchman. With effect from 09.10.2012, respondent was terminated without giving any notice. Being aggrieved and dissatisfied with the said termination, by raising an industrial challenge, respondent approached learned Labour Court by way of reference. Reference came to be rejected vide order dated 01.04.2019 by the learned Labour Court. Resultantly, Special Civil Application being No.4938 of 2023 came to be filed before this Court. This Court remanded back the case vide order dated 18.10.2023. Learned Labour Court, after considering the evidence on record, partly allowed the reference and directed petitioner to pay an amount of 50% back wages from the date of termination till the the date workman reached the age of superannuation.

4.2. Being aggrieved and dissatisfied with the impugned award, the petitioner is before this Court.

5. Learned AGP for the petitioner has submitted that the learned Labour Court has committed an error of law in passing the award. It is further submitted that learned Labour Court has failed to appreciate the fact that the respondent-workman was not in continuous service under the establishment of the petitioner-employer. It is further submitted that respondent-workman has not been able to prove his claim as the whole claim of the respondent-work is only on assumption, therefore, the claim of the respondent-workman ought to have been denied by the learned Labour Court. It is further submitted that workman had stopped coming to work in the year 2012 and after a period of 5 years, in 2017, workman filed reference. The workman was not a regular employee. Therefore, there is no breach of provisions of Sections 25F, 25G and 25H of the Act. It is further submitted that the present petition may be allowed as

the award of granting 50% back wages is erroneous. Except above, no other submissions are canvassed by learned AGP for the petitioner.

5. I have considered the submissions made by learned AGP for the petitioner and perused papers placed on record. The workman was working as a watchman since 1987. On 09.10.2012, workman was orally terminated by petitioner. The termination order was assailed by the workman by way of reference. The learned Labour Court on 01.04.2019 held termination illegal and directed the present petitioner to reinstate workman with continuity in service. The petitioner assailed the decision before this Court. Vide order dated 18.10.2023 passed in Special Civil Application 4938 of 2023, the Co-ordinate Bench of this Court remanded back the case to the learned Labour Court to decide afresh. The witness of petitioner admitted that the post at which the workman was serving, was a permanent post, and in absence of any evidence that the

workman was serving as seasonal work, the learned Labour Court held, on the material available on record, that the termination was without any notice, notice pay as contemplated under Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”). The petitioner was also directed by the Labour Court to produce documentary evidence which were in its power and possession, but petitioner did not produce any documentary evidence such as attendance sheets, pay slips and muster roll. Therefore, adverse inference has to be drawn against petitioner for withholding the best and material evidence available. Currently, the work is being taken by petitioner through other workman. Therefore, the post at which the workman was serving, was available even after termination of the workman. The workman was never given any opportunity by offering himself for re-appointment that is a clear breach of the provisions of Section 25H of the Act which mandates that any workman when retrenched, the employer proposes to take any other person into the employment, the retrenched workman

shall be given an opportunity by offering themselves for re-employment. There is no contrary material available on record, which shows that there was no retrenchment of the respondent. The witness of the petitioner in the cross-examination has admitted that the vacancy was filled up without offering the workman for re-employment. Thus, the oral evidence of their employee that the respondent-workman was retrenched illegally and was never offered re-employment, the award of learned Labour Court that the termination is bad and illegal does not require any interference. However, it is to be noticed that the workman himself stated that he was 60 years of age, keeping this each factor in mind and more particularly, when the reinstatement of the workman is not possible, the question remains as to what should be the percentage of back wages to be awarded to the workman. So far as lump sum compensation in law of reinstatement is concerned, the workman has also failed to prove that he has remained in unemployment and there was no gainful activity carried out by the workman during the

intervening period. It is not the case of the workman that he has remained unemployed. Thus, the learned Labour Court did not award any lump sum compensation in lieu of reinstatement. The award of back wages in the backdrop of the above facts, is just and reasonable. The learned AGP for the petitioner also could not point out any infirmity in awarding 50% back wages to the workman.

6. Considering the aforesaid facts and circumstances, I do not find any illegality and infirmity in the findings of the learned Labour Court and accordingly, the present petition being meritless, stands dismissed. The petitioner is directed to comply with the order of learned Labour Court within a period of six weeks from the date of receipt of this order.

RINKU MALI

(D. M. DESAI,J)