

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7814 of 2008****With****R/SPECIAL CIVIL APPLICATION NO. 9090 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE DEVAN M. DESAI**

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Approved for Reporting	Yes	No
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DHIMANT K SHAH & ANR.**Versus****YOGESHKUMAR JAYANTILAL SHAH & ANR.**

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Appearance:**MR DJ BHATT(164) for the Petitioner(s) No. 1,2****MR HEMANG M SHAH(5399) for the Respondent(s) No. 2****MS VIRAJ S FOZDAR(5039) for the Respondent(s) No. 1**

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CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI**Date : 10/06/2026****JUDGMENT**

1. The present petitions are filed under Articles 226 and 227 of the Constitution of India, 1950, challenging the judgment and award dated 14.08.2007 passed by the learned Labour Court, Ahmedabad in Reference LCA No. 1306 of 1997.

2. Special Civil Application No. 7814 of 2008 is preferred by the employers, praying for the following reliefs:

“(A) Your Lordships may be pleased to admit and allow this petition;

(B) Your Lordships may be pleased to issue an

appropriate writ, order or direction and thereby quash and set aside the order and award passed by the Hon'ble Labour Court, Ahmedabad passed in Reference LCA no. 1306 of 1997 dated 14/8/2007 in the interest of justice;

(C) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to stay the award and order of labour court, Ahmedabad qua amount of back wages which is awarded by the Hon'ble Labour Court, Ahmedabad passed in Reference LCA No. 1306/1997 dated 14/8/2007 in the interest of justice;

(D) Your Lordships may be pleased to grant any other and further relief/s that may deem, fit and proper;"

Whereas, Special Civil Application No. 9090 of 2008 is preferred by one of the employees, praying for the following reliefs:

"(A) Your Lordships be pleased to issue a writ of certiorari or any other appropriate writ, order or direction, to quash and set aside that part of the judgment and award dated 14.8.2007 passed by the Labour Court in Reference (LCA) No.1306/1997 that denies 75% back wages with all consequential benefits flowing from reinstatement of the petitioner in service;

(B) Your Lordships be pleased to declare that the petitioner is entitled to full back wages with all consequential benefits on his reinstatement in service; and

(C) Your Lordships be pleased to pass any other appropriate order, as deemed fit, in the interest of justice;"

The other employee, Ramsinh K. Waghela has not assailed the said order and, therefore, the impugned order has attained its finality so far as Ramsinh K. Waghela is concerned.

3. Heard learned advocate Mr. D.J. Bhatt for the petitioners and learned advocate Mr. Ninad P. Shah for the respondents.

4. Learned advocate for the petitioners – employers submits that the employers are running a tailoring shop functioning at Gandhinagar and Ahmedabad. At the time of appointment of employees, a contract of employment was executed. The respondents – employees were working at the Gandhinagar Shop. The business of petitioners at Gandhinagar shop had slowed down and therefore, in the month of March, 1997, the Gandhinagar Shop was closed down. The respondents – employees approached the learned Labour Court for reinstatement at Gandhinagar Shop with ancillary benefits. It is submitted that the petitioners – employers have not terminated the services of respondents – employees and, therefore, there is no question of compliance of Section 25F of the Industrial Disputes Act, 1947 (hereinafter, referred to as “the Act”). It is further submitted that in the contract of employment, it was stated that in case the Gandhinagar Branch is closed in the future, the employees would be transferred to Ahmedabad Shop. Pending Reference proceedings, petitioners filed pushis, Exhibit – 10, stating that respondents – employees would be taken up in job at

Ahmedabad Officer. However, despite the said purshis, employees did not resume duties at the Ahmedabad Shop. It is submitted that the learned Labour Court, instead of considering the fact that the employees had refused to resume at the Ahmedabad Shop, allowed the Reference with a direction to reinstate the employees at the Ahmedabad Shop with 25% back wages. It is further submitted that respondent – Yogeshkumar Jayantilal Shah was appointed as a salesman-cum-accountant on 15.12.1980. Whereas, other employee – Ramsinh K. Waghela was appointed as a peon in the year 1985. It is submitted that due to stay granted by the learned Civil Court at Gandhinagar against the opening of the Gandhinagar Shop, the shop at Gandhinagar remained closed for nearly two months. Due to the injunction order passed by the learned Civil Court, the day-to-day functions of the Gandhinagar Shop remained closed.

5. Another contention raised by learned advocate for the employers is that there was no term of reference to reinstate employees at the Ahmedabad Shop. And therefore, no relief could have been granted in favour of the employees to be reinstated at the Ahmedabad Shop. It is submitted that the grant of 25% back

wages is nothing but a premium to the employees. In the background of the above submissions, it is submitted that the present petition be allowed. Except above, no other submissions were made by learned advocate for the petitioners – employers.

6. Learned advocate for the respondent – employee submitted that the learned Labour Court has committed an error by awarding only 25% as back wages despite the fact that the termination has been held illegal. It is submitted that when termination is held illegal, the employees should have been granted 100% back wages. It is submitted that Yogeshkumar Jayantilal Shah has attained the age of superannuation on 08.02.2013, and therefore, the employee is entitled to full back wages from the date of award till the date of superannuation. It is submitted that the learned Labour Court has not believed the allegation of the employers that the Shop had remained closed due to injunction order passed by the learned Civil Court. As a matter of fact, there was no order of injunction granted by any Civil Court for closure of the Shop at Gandhinagar. It is submitted that the employers have transferred the shop to Vasudev Enterprise who is running its business at the Gandhinagar Shop. Except above, no other submissions were

made by learned advocate for the respondent – employee.

7. Having considered the submissions canvassed by learned advocates for the parties and upon perusal of the papers placed on record, it appears that the employee, Yogeshkumar Jayantilal Shah was appointed as a salesman-cum-accountant on 15.12.1980 by the employers by executing a contract of service. However, neither parties have placed on record the service contract. However, it is an admitted fact coming out from the record that the said employee was appointed as a salesman-cum-accountant with a condition that in case the shop at Gandhinagar is closed down, he would be transferred to Ahmedabad Shop. There is no adverse contention raised by the employers against the aforesaid fact. The grievance of the employee is that on 22.03.1997, both the employees were terminated from the service without issuing any notice as contemplated under the Act. So far as another employee, Ramsingh K. Waghela is concerned, he has not assailed the judgment and award dated 14.08.2007 passed by the learned Labour Court and, therefore, the impugned order has attained finality qua him.

8. It also appears from the record that the Ahmedabad Shop is

the main shop and the Gandhinagar Shop was opened at a later point of time. The contention of learned advocate for the employers that due to the injunction order of the learned Civil Court, the shop at Gandhinagar remained closed, said fact could not be established by the petitioners – employers as the record reveals that only a notice was issued by the learned Civil Court. There was no order of injunction operated against the employers not to open the shop. It is also an admitted fact that till 23.03.1997, the Gandhinagar Shop was in operation. It is pertinent to observe at this stage that on 30.07.1998, the petitioners – employers filed a purshis, Exhibit – 10, stating that the employers are ready and willing to accept the employees at Ahmedabad Shop as the Gandhinagar Shop has been closed down. This fact of closure of Gandhinagar Shop is substantiated by evidence produced by the petitioners – employers stating that one Vasudev Enterprise is running its business at the Gandhinagar Shop.

9. Section 25F of the Act mandates that a workman employed in any industry who has been in continuous service for not less than one year under an employer shall not be retrenched by that employer until, one month's notice in writing indicating the reasons

for retrenchment given stating the period of expiration of notice or the workman has been paid in lieu of such notice, wages for the period of the notice. In the present case, admittedly, the employers have not complied with the provisions of Section 25F of the Act.

10. When the employers have shown their readiness and willingness to absorb the employees at the Ahmedabad Shop, the grievance raised by learned advocate for the petitioners – employers that the learned Labour Court has travelled beyond the Reference is of hardly any importance. When the employers have expressed their willingness to accept the employees in the service at the Ahmedabad Shop, this Court has hardly to go into the aspect of validity of the impugned order on the ground that impugned order is beyond the terms of the Reference. The order impugned regarding holding the termination as bad, granting reinstatement at the Ahmedabad Shop is, in my opinion, just and reasonable and does not require the interference of this Court.

11. So far as the question of claiming 100% back wages on account of termination being held illegal is concerned, the contention of learned advocate for the employee that once the termination has been held to be illegal, the employee is entitled to

full back wages. Back wages is not an automatic rule of law. Even if termination is held illegal or bad, Tribunals / Courts have discretion to deny full / partial back wages. The employee must state on affidavit that during the period of termination till reinstatement, he has not been employed anywhere else and employee was not engaged in any gainful activity. Considering this basic lacuna in evidence, learned Labour Court granted just and reasonable back wages to the tune of 25%. The percentage of granting of back wages is a discretionary power. Such discretion has been exercised by the learned Labour Court after examining the evidence, both, oral as well as documentary. The learned Labour Court has rightly observed that the employee being a salesman-cum-accountant, would not have remained unemployed since year 1997 till the date of disposal of the Reference in the year 2007. The employee, being a skilled employee, would have engaged himself in the activity of earning livelihood. The employee has also not led any evidence that he has remained unemployed for the intervening period. Moreover, the employee has attained the age of superannuation in the year 2013 i.e., pending the present petition.

12. Considering the overall factual aspect of the matter, I do not find any reason to interfere with the order passed by the learned Labour Court in granting 25% as back wages for the intervening period.

13. Resultantly, both the petitions are hereby, dismissed. No order as to costs. Rule is discharged.

14. The employee is entitled to interest at the rate of 6% per annum on the amount of back wages from the date of award till the date of superannuation age i.e. 08.02.2013.

MUSKAN

(D. M. DESAI,J)