

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 4597 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE DEVAN M. DESAI**

Approved for Reporting		Yes	No

BABUBHAI ABHEYRAJ CHAUDHARY**Versus****EXECUTIVE ENGINEER****Appearance:****MR PH PATHAK(665) for the Petitioner(s) No. 1****MS AGNEYA MANKAD, AGP for the Respondent(s) No. 1****CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI****Date : 17/07/2026****JUDGMENT**

1. The present petition is filed under Articles 226 and 227 of the Constitution of India, 1950 by the petitioner praying for the following reliefs:

“A. The Hon’ble Court be pleased to issue an order, writ ion the nature of mandamus and/or certiorari or other appropriate writ, order or direction, declaring the award of the Labour Court in reference LCK 1/2008 dated 10.8.2009, denying normal relief of reinstatement with consequential benefits to the petitioner as arbitrary, illegal and be pleased to quash and set aside the same and direct the respondent to reinstate the workman in services with all consequential benefits to the petitioner.

B. Be pleased to direct the respondents to treat the petitioner in services for all purposes ,as if he was not terminate from services and grant all grant benefits to the petitioner.

C. Pending admission and final disposal of the petition be pleased to direct the respondent to take the petitioner in services forthwith.

D. Any other further relief deem fit and proper in interest of justice.”

2. Heard learned advocate Mr. P.H. Pathak for the petitioner and learned AGP Ms. Agneya Mankad for the respondent – State.

3. Brief facts of the case are as under:

3.1 The petitioner was working as a clerk with respondent since the year 1983. On 27.09.1986, the services of the petitioner came to be illegally terminated. The workman approached the learned Labour Commissioner and on failure of settlement, dispute was referred to the learned Labour Court in the year 1989, bearing Reference (LCM) No. 102 of 1989. The Reference was partly allowed and the workman was granted an amount of Rs.5,000/- as lump-sum compensation in lieu of reinstatement.

3.2 Being aggrieved and dissatisfied with the quantum of compensation, the workman – petitioner is before this Court by way of the present petition.

4. Learned advocate for the petitioner submitted that the workman has worked for a period of three years satisfactorily as a clerk in the office of the respondent herein. The respondent terminated services of the petitioner on 27.09.1986 without issuing any notice and notice-pay, as contemplated under Section 25F of

the Industrial Disputes Act, 1947 (hereinafter, referred to as "*the Act*"). The petitioner, during Reference proceedings called upon the respondent to produce original attendance-sheet, salary-slips of the employee for the period between 01.11.1983 to 27.09.1986. The respondent did not produce the required documents though they were in their power and custody. The learned Labour Court has rightly held that the workman has completed 240 days of service preceding 12 calendar months from the date of termination as well as the learned Labour Court has rightly held that the termination is bad and illegal. The learned Labour Court has awarded a very meagre amount of lump-sum compensation. It is submitted that as on today, the workman is aged about 62 years of age and, therefore, the question of reinstatement of the employee does not survive, however, it is prayed that the amount of lump-sum compensation may be enhanced reasonably. Except above no other submissions were made by learned advocate for the petitioner.

5. *Per contra*, learned AGP for the respondent – State, at the outset, contended that the workman has not established and proved that he has completed 240 days of services. It is the primary burden upon the workman to prove and establish the

mandatory requirement of proving completion of 240 days of service preceding 12 calendar months from the date of termination. It is further submitted that the work of the petitioner was seasonal and, therefore, the employee was not entitled to be reinstated. Except above, no other submissions were made by learned AGP for the respondent – State.

6. Having considered the submissions made by learned advocates for the parties and upon perusal of papers placed on record, it appears that the petitioner – workman was working as a clerk since 1983 with the respondent. In the statement of claim, it is stated by the petitioner that the workman was not given any Id-card and attendance-card. In the cross-examination, the workman has stated that he has worked continuously from 01.11.1983 upto 27.09.1986 and the witness of the respondent has admitted in his cross-examination that the workman has worked from the year 1983 but the workman was not given either Id-card or pay-slip. When the documents were called upon by the workman to be produced by respondent, the respondent in the affidavit, Exhibit – 18 had stated that since the record is very old, it was not found and, therefore, the required documents could not be produced. However, the respondent has produced handwritten attendance-

sheet for the period between 01.11.1983 to 29.12.1983 and from 01.01.1984 to 31.07.1984. Despite the order passed by the learned Labour Court on 12.05.2009 for production of documents, the respondent has not produced any documents. On the evidence, both oral as well as documentary, the learned Labour Court has come to a conclusion that the workman has worked with the respondent for more than 240 days and the termination of the workman was without following mandatory requirements as contemplated under Section 25F of the Act. Now the question that remains under consideration in the background of the aforesaid facts is, whether the workman is entitled for reinstatement and other benefits once the termination is held to be illegal. Before venturing into the entitlement of reinstatement of employee in the present case, it is required to be taken into consideration the age of the workman, which is about 62 years as on today, as per the submission made by learned advocate for the petitioner. Keeping in mind the age of the employee as on today, reinstatement of the petitioner is out of place. In such cases, more particularly, when the termination is held to be illegal and against the provisions of Section 25F of the Act, what should be a reasonable lump-sum compensation for an employee who has attained the age of

superannuation? There is no straitjacket formula for determining the amount of lump-sum compensation. However, the amount for lump-sum compensation can be determined on the basis of the length of service, post at which the employee was working and delay in approaching the Court against the termination. The record indicates that after the workman was terminated from his services, the workman filed a complaint on 02.09.1988 before the learned Commissioner. Thereafter, the dispute was referred to the learned Labour Court on 03.03.1989. Till August, 1991, the workman remained absent and, therefore, the Reference came to be dismissed on 26.08.1991. Thereafter, an application for restoration was filed as late as in the year 2007 which was granted and statement of claim was submitted by the workman on 31.12.2007. Therefore, the conduct of the workman also plays a vital role in determining the amount of lump-sum compensation. The workman remained silent for so many years after the Reference was dismissed for default in the year 1991. Keeping in mind a justice oriented view and the object of the Industrial Disputes Act, 1947, which is enacted for the benefits of the workmen whose services have been illegally terminated by the employer. Considering the facts of the present case, it would meet the ends of justice if the

compensation awarded by the learned Labour Court is enhanced. In my opinion, an amount of Rs.1,00,000/- would be an adequate amount for lump-sum compensation in lieu of reinstatement and other benefits of services. Thus, the present petition is partly allowed. The judgment and award dated 10.08.2009 passed by the learned Labour Court, Mahesana in Reference (LCM) No. 102 of 1989 is, hereby modified to the extent that the workman is entitled to lump-sum compensation of Rs.1,00,000/- in lieu of reinstatement and other consequential benefits.

7. The amount of compensation shall be deposited by respondent herein before the learned Labour Court, Mahesana within a period of six weeks from the date of receipt of this order. Once the compensation amount is deposited by the respondent herein, the learned Labour Court shall disburse the same in favour of the petitioner – workman after following due procedure. It is also directed that failing to deposit the said amount within a period of six weeks from the date of receipt of this order, the workman shall be entitled to an interest at the rate of 5% per annum from the date of award dated 10.08.2009 till realisation. In light of the above, the present petition is disposed of accordingly.

(D. M. DESAI,J)

MUSKAN

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MUSKAN AJAY MENON(HC02359), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 21/07/2026 17:54:53