

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 7059 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

CHANDUBHAI PUNJABHAI TALPADA  
Versus  
DEPUTY EXECUTIVE ENGINEER

Appearance:

MR YOGEN N PANDYA(5766) for the Petitioner(s) No. 1  
MS URMILA DESAI AGP for the Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE**

**Date : 11/03/2022**

**CAV JUDGMENT**

**1.** The present Special Civil Application takes exception to the award dated 07.12.2007 passed by the Presiding Officer, Labour Court, Nadiad in Reference (LCN) No. 245 of 1990.

**2.** The brief facts leading to filing of the present Special Civil Application are as follows :-

**2.1** It is the case of the petitioner that he had joined the services of the respondent in the year 1983 and was performing the duties of the labourer/table work as a daily-wager. Since the petitioner possessed the educational qualification of 10<sup>th</sup> pass, he was also given office table work. It is further alleged that his services came to be terminated orally on 29.09.1988 without following any procedure under the Industrial Disputes Act, 1947 and in gross violation of principles of natural justice. Aggrieved, the petitioner preferred a complaint for illegal termination and the same culminated into reference to the Labour Court, Nadiad as Reference (LCN) No.245 of 1990. The petitioner filed the statement of claim before the Labour Court, Nadiad. The respondent herein filed their written statement. Both the parties led the evidence in support of their case.

**2.2** By judgment and award dated 07.12.2007, the said reference came to be dismissed by the learned Labour Court on the ground that the documents produced and relied upon by the petitioner were not in consonance with the original record produced by the respondent department and the same was appearing to be got up or forged for the purpose of seeking the relief of reinstatement.

**2.3** Aggrieved, the petitioner has preferred the present Special Civil Application.

**3.** Heard learned counsels appearing for the parties and perused the documents on record.

**4.** Learned advocate Mr. Yogen Pandya appearing for the petitioner submitted that it was an erroneous finding on the part of the learned Labour Court to conclude that the petitioner had not

completed 240 days of continuous service in twelve months preceding the date of termination and hence, he was not entitled to any relief. It was further submitted that the learned Labour Court ought to have considered the paid holiday i. e. Sunday which fell during the period of service rendered by the petitioner for the purpose of calculation of 240 days. He submitted that even upon relying on the record as produced by the respondent, the petitioner has worked for 57 days during the period from 29.11.1987 to 24.01.1988 and worked for 182 days during the period from 25.01.1988 to 27.07.1988 and that considering that 17.07.1988 was Sunday and Holiday and the petitioner has completed 240 days of service prior to his termination and hence, was entitled to protection under Section 25(F) of the Industrial Disputes Act. Despite the aforesaid period, it was submitted that he has also worked for various days during earlier years which could not be denied by the department. With respect to the date of termination, learned counsel submitted that the petitioner had subsequently averred in his statement of claim that his services were lastly terminated on 29.09.1988 and therefore, the Labour Court ought not to have come to a conclusion on the basis of his oral evidence that he was not even aware of his exact date of termination as he had deposed different dates of termination in his oral evidence. Learned counsel submitted that there was a clear violation of Section 25(F) of the Industrial Disputes Act and hence, the termination was required to be held bad in law and the reference was required to be allowed with reinstatement and back-wages. It was submitted further that the respondent's witness had subsequently admitted in the cross-examination before the learned Labour Court that at the time of termination of the services of the petitioner, no seniority list was published and the work which was being performed by the petitioner herein was being done by other employees and thus, admittedly, there was a breach of Section 25(G) & (H) of the Industrial Disputes Act. It was lastly submitted

that the learned Labour Court erred in coming to the conclusion that the petitioner had filed a case based on false documents, which is not correct and that the reference ought to have been allowed.

**5.** Per contra, learned Assistant Government Pleader Ms. Urmila Desai appearing for the respondent has supported the award passed by the learned Labour Court. It was submitted that on proper appreciation of evidence on record, the learned Labour Court has come to the conclusion that the documents with respect to the attendance and work during the relevant period did not match with the official record as produced by the witness for the department and hence, it has been rightly held that these documents produced by the petitioner are forged and cannot be relied upon. It was further submitted that the petitioner has not completed 240 days in any preceding year and hence, he was not entitled to any protection under the Industrial Disputes Act. It was submitted that the department had duly proved its case by producing all the relevant muster-rolls with respect to the employment of the petitioner during the period alleged and therefore, the award ought not to be interfered with. Finally, it was submitted that the petitioner was not entitled to any relief whatsoever and the Special Civil Application was liable to be dismissed.

**6.** Heard the counsels for the parties at length and perused the documents on record.

**7.** It is an admitted position that the petitioner was not appointed as a daily-wager by following any due procedure of law. It is further seen from the record that the petitioner has sought to rely upon certain documents in support of his claim that he had worked for more than 240 days. In his own deposition, the petitioner first states that he was orally terminated on 28.07.1988.

Thereafter, the petitioner states that he was orally terminated on 29.09.1988. In his deposition, he further states that he was orally terminated by one Mr. K. V. Pandya. Thereafter, the petitioner corrects himself and states that one Vankar Saheb had orally terminated him. This deposition in the cross-examination shows that the petitioner himself is not very clear as to when he was orally terminated and by whom. It is also on record that the petitioner is not illiterate and has passed SSC examination. Therefore, the discrepancy in his date of oral termination has been rightly not accepted by the learned Labour Court.

**8.** It is further observed from the record that the petitioner had produced certain pay-receipts issued to him for the work done by him. Even after relying on those pay-receipts, the learned Labour Court has come to the conclusion that the petitioner has worked only for 93 days and there is no other evidence produced by the petitioner to show that in the preceding year, he had worked with the respondent for a period of 240 days which is also not supported by any oral evidence. The petitioner has produced the pay-receipts of intermittent period and the same cannot be relied upon to conclude that the petitioner had worked continuously for the said period.

**9.** Against this evidence of the petitioner, the witness for the department has produced the muster-rolls with respect to the attendance of the petitioner and the work done by him as well as the copies of the pay-receipts issued to the petitioner while in service. A perusal of the said office record shows that in the year 1987, the petitioner had worked only for a period of 31 days, and in the year 1988, he had worked for a period of 177 days which is duly noted in the muster-rolls. Therefore, as per the office record produced in the labour court, the petitioner had worked for a total period of 208 days in the year 1987-1988 and not for 240 days as

alleged. It is the case of the respondent department that the petitioner was engaged for temporary work on canal irrigation and for a short period for office work. Vide Exh.48, the Department has produced a chart of attendance and the number of days the petitioner has worked as per the official records maintained by them. This Exhibit has not been disputed by the petitioner. The said Exhibit shows that the petitioner has worked for the Department as follows :-

Year and name of muster clerk	Muster Number	Period	Voucher No and Date	Attendance days	Salary remarks
1983 M.M. Kadri	87124	21.11.83 to 20.12.83	N/37 dtd.4.2.84	10	125-50
1984 M.M. Kadri	87363	21.03.84 to 20.04.84	N.46 dtd.4.5.84	31	374-20
1986 M.M. Kadri	469335	27.03.86 to 26.04.86	N.61 dtd.26.6.86	-	No attendance in the muster as not worked 61-00
(2) !! !!	469368	27.04.86 to 26.05.86	N.65 dtd.27.6.86	4	
(3) !! !!	469409	01.06.86 to 30.06.86	N.20 dtd.22.8.86	25	
				Total 29	381-25
1987 (1) A. V. Pandya (2) !! !!	38115 38135	29.11.87 to 29.12.87 30.12.87 to 24.01.88	N.60 dtd.19.1.88 N.78 dtd.10.2.88	31 26	547-15 458-90
				Total 57	
1988 (1) A. V. Pandya (2) !! !! (3) !! !! (4) !! !! (5) !! !!	38194 38382 38412 38561 38575	25.02.88 to 25.03.88 26.03.88 to 25.04.88 26.04.88 to 26.05.88 27.05.88 to 26.06.88 27.06.88 to 27.07.88	N.45 dtd. 19.4.88 N.82 dtd.13.5.88 N.33 dtd. 22.7.88 N.37 dtd.22.7.88 N.34 dtd.1.10.88	30 31 31 31 28	529-50 547-15 547-15 547-15 494-20
				Total 151	
M. N. Vankar	38828	27.08.88 to 26.09.88	N.111 Dtd. 3.11.88		No name in the muster as not worked

**10.** The witness for the Department has deposed only from the records maintained by the office and that he has no personal

knowledge about the same. Though the said witness has admitted that there are many SSC pass persons working with the Department, the same will not come to any aid of the petitioner as it is on record that he was called for work as and when the same was available during the alleged period from 1983 to 1988. The learned Labour Court has only relied upon the official records to decide the case of the petitioner and has rejected the evidence produced by the petitioner which does not tally with the official record and rightly so in the opinion of this Court. Moreso, the petitioner has not disputed the official records.

**11.** In the premises, this Court is of the opinion that the Award passed by the learned Labour Court is just and proper and is passed on the basis of the official records as produced by the Department and the same cannot be said to be perverse. Accordingly, the Special Civil Application is dismissed. Rule is discharged. There shall be no order as to costs.

(ANIRUDDHA P. MAYEE, J.)

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THE HIGH COURT  
OF GUJARAT

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