

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 30903 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE****Sd/-**

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| 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 |

RAJNIBHAI RANCHOODBHAI PATEL

Versus

GANDHINAGAR JILLA SAHAKARI KHARID VECHAN SANGH LIMITED

Appearance:

MR TR MISHRA(483) for the Petitioner(s) No. 1

MS ASHA H GUPTA(1025) for the Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE****Date : 06/06/2022****ORAL JUDGMENT**

The present Special Civil Application challenges the impugned judgment and award dated 7.5.2007 in Reference (LCA) No.1800 of 1992 passed by the learned Labour Court, Ahmedabad whereby, the said reference has been dismissed.

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

2.1 It is the case of the petitioner that he was working as a

Pharmacist with the respondent Sangh for a period of 11 years continuously on a monthly salary of Rs.1,775/-. His services came to be terminated on 31.3.1992.

2.2 Aggrieved, the petitioner raised dispute before the learned Labour Commissioner who by order dated 31.7.1992 was pleased to make a reference to the learned Labour Court, Ahmedabad being Reference (LCA) No.1800 of 1992.

2.3 The parties subjected themselves to the jurisdiction of the learned Labour Court. They led oral as well as documentary evidence in support of their case. By judgment and award dated 7.5.2007, the learned Labour Court was pleased to dismiss the reference.

2.4 Aggrieved, the petitioner herein has filed the present Special Civil Application.

3. The present Special Civil Application came to be admitted by this Court vide order dated 25.3.2008.

4. Mr. T.R.Mishra, learned advocate appearing on behalf of the petitioner would submit that the petitioner had put-in continuous service of 11 years uninterruptedly as a Pharmacist with the respondent Sangh. His services came to be terminated on the ground that the medical store run by the respondent Sangh was being closed. He was retrenched and amounts of Rs.13,410/- and Rs.49,314/- were paid by cheque to the petitioner towards the legal dues which included retrenchment compensation and other terminal benefits. He further submitted that instead of closing the medical store, the respondent Sangh

had given the said medical store on rent to somebody to run the same and therefore, the termination of the petitioner was bad in law and not in accordance with the reasons stated in the termination letter. The petitioner had sent a legal notice to the respondent Sangh which was duly replied to by the learned advocate for the respondent Sangh. It was further submitted that false allegations were levelled against the petitioner herein by the respondent Sangh and therefore, the learned Labour Court ought to have lifted the veil and held that the action of terminating the services of the petitioner on the ground of retrenchment due to closure of the medical store was illegal and he was retrenched without conducting any departmental inquiry or without affording any opportunity under the guise of closure of medical store. He has also argued that the petitioner has placed on record an advertisement issued in February-1992 by the respondent Sangh for the post of Pharmacist and the said act shows that the petitioner was being removed on the false ground of closure of medical store. He would submit that the impugned judgment and award is bad in law and ought to be set aside and the petitioner be reinstated in service with the respondent Sangh.

5. Ms. A.H.Gupta, learned advocate appearing for the respondent Sangh opposed the present Special Civil Application and submitted that the respondent Sangh had decided to close the medical store business as it was running in loss and that as per the new arrangement, all the Taluka level societies were to run their own medical stores. Therefore, by resolution dated 24.2.1992, the respondent Sangh in its Managing Committee meeting decided to close the medical store since it was running in losses and it was resolved that the employees of the medical

stores would be retrenched in accordance with law. Accordingly, the petitioner was paid his dues by cheque which has been duly encashed by him and he has been retrenched in accordance with law and therefore, no interference is called for. It was further submitted that even though the advertisement was issued by the respondent Sangh, it was not acted upon, no applications were considered and no any Pharmacist was appointed after closure of the business of medical store and therefore, it cannot be said that the petitioner has been prejudiced by being retrenched. It is further submitted that after the classification by the State Government of Gandhinagar District into Jilla and Taluka separately, the respondent establishment had no longer control, charge and administration or hold over the property held by it earlier before such classification. After the classification, the said property which is situated in the Civil Hospital compound came to be owned by the Gandhinagar Taluka Sahkari Kharid Vechan Sangh and even the respondent Sangh shifted its office from the said Civil Hospital compound. Therefore, the medical store, which was earlier run by the respondent Sangh had become the property of Gandhinagar Taluka Sahkari Kharid Vechan Sangh and the present respondent Sangh has nothing to do with the said property. Further, after passing of the resolution dated 29.2.1992, the said medical store was rented to one Natubhai Becharbhai Chaudhary on rent note agreement for a period of 3 years from 1.3.1992 along with furniture after selling the medical stock of medicines. The respondent Sangh does not have any control or administration over the working of the medical store since the said premises has been rented out. After the classification into District and Taluka, the rent of the medical store is now being collected by the Gandhinagar Taluka Sahkari Kharid Vechan Sangh which is the owner and the respondent

Sangh has not at all any further concern with the same. It was submitted that the impugned award passed by the learned Labour Court is just, proper and legal and therefore, the same should be upheld.

6. Heard learned counsel for the parties and perused the documents on record.

7. While adjudicating the reference, the learned Labour Court has framed five issues. All the five issues have been adjudicated on the basis of evidence on record. It is seen from the evidence brought on record that the respondent Sangh was initially holding charge of both, the Jilla and Talukas of Gandhinagar district and was functioning on *no profit no loss* basis. Since the business of medical store was running in losses, it was resolved by the Managing Committee of the respondent Sangh vide resolution dated 24.2.1992 to relieve two employees which included the petitioner herein after following due procedure of law and to retrench them since the respondent Sangh wanted to exist from the business of medical store. Accordingly, in accordance with the said resolution, the business of medical store was closed and the services of the petitioner came to be retrenched. Amount of Rs.13,410/- was paid vide cheque No.114398 and Rs.49,314/- was paid vide cheque No.158224 towards the legal dues, which included the retrenchment compensation and other terminal benefits which has been admittedly received by the petitioner and duly encashed also. The main grievance of the petitioner is that instead of closing down the medical store, the respondent Sangh had rented out the medical store to a third person and therefore, in that background, his retrenchment is illegal. It was also argued that

the respondent Sangh had issued advertisement dated 16.2.1992 inviting applications for Pharmacist in its medical store. However, no further evidence brought on record to show that pursuant to such advertisement, any person was appointed as Pharmacist by the respondent Sangh. On the contrary, by way of evidence, the respondent Sangh has brought on record that as per its Managing Committee's resolution, the medical store was closed, its stock was sold and only the store premises with fixed furniture therein was rented out to a third person, who would run the medical store at his own cost and expenses while giving a fixed rent to the respondent Sangh. Therefore, it is seen that after the retrenchment of the petitioner, no person has been appointed as a Pharmacist by the respondent Sangh and that they have closed down their business of running medical store in the Civil Hospital compound, Gandhinagar. By way of affidavit-in-reply to the present Special Civil Application, it has been further brought on record by affidavit that subsequently, the State Government has classified the Jilla Sangh into Jilla and Taluka Sanghs. In pursuance of the same, the said medical store property has gone to the share and has been transferred to Gandhinagar Taluka Sahkari Kharid Vechan Sangh and the respondent Sangh does not have any control over the said premises subsequently. It is further stated on affidavit that the rent is also being now collected by the Gandhinagar Taluka Sahkari Kharid Vechan Sangh subsequent to the orders by the State Government.

8. The evidence and documents on record reveal that the business of the medical store has been closed down by the respondent Sangh. The petitioner has been retrenched in accordance with law after payment of all the retrenchment

compensation and other terminal benefits which has been duly accepted by the petitioner.

In view of the same and for the aforesaid reasons, this Court finds no infirmity in the impugned judgment and award passed by the learned Labour Court. Therefore, the present Special Civil Application is dismissed with no order as to costs. Rule is discharged.

KAUSHIK D. CHAUHAN

Sd/-  
(ANIRUDDHA P. MAYEE, J.)

