

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 2797 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE DEVAN M. DESAI**

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Approved for Reporting	Yes	No

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STATE OF GUJARAT THROU DEPUTY EXECUTIVE ENGINEER

Versus

SURESHBHAI BAPUDBHAI PATEL (DECEASED) & ORS.

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Appearance:

MR MAYANK CHAVDA, AGP for the Petitioner(s) No. 1

DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES for
the Respondent(s) No. 1

RULE NOT RECD BACK for the Respondent(s) No. 2

MS SIMRAN PAHWA for M/S. THAKKAR AND PAHWA ADVOCATES(1357)
for the Respondent(s) No. 1.1,1.2,1.3,1.4

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CORAM: HONOURABLE MR. JUSTICE DEVAN M. DESAI**Date : 13/08/2026****JUDGMENT**

1. By way of this petition, the petitioner has prayed to quash and set aside the impugned order dated 16.2.2018 passed by learned Labour Court, Valsad in Reference (LCV) No.649 of 2000.
2. Heard learned AGP Mr. Mayank Chavda for the petitioner and learned advocate Ms. Simran Pahwa for respondent No.1. Though served, none appeared for respondent No.2. Perused the record.
3. At the outset, learned AGP has fairly submitted under the instruction of Mr. Hardikkumar H. Thakariya, Junior Clerk, Damanganga Naher Sub Division No.11, Pardi who is present before this Court that issue is covered in the decision rendered by this Court in SCA No.2793 of



2019 which has attained finality and the same was implemented by the State.

4. Brief facts of the case are as under:
5. The respondent was working as daily wager / helper with the petitioner before 9 years of the notice of termination dated 1-1-1998 came to be issued. On 1-6-1999, the services of the workmen came to be terminated which resulted into an industrial dispute. On non-settlement of the dispute, the learned Assistant Labour Commissioner referred the dispute to learned Labour Court, Valsad. The reference came to be partly allowed and the petitioner was directed to reinstate the workmen with continuity in service together with 30% back wages. Being aggrieved and dissatisfied with the impugned judgment and award, the petitioner is before this Court.
6. Learned AGP for the petitioner contended that the impugned judgment and award is bad in law as the workman was not on regular appointment. The workman being a casual worker cannot claim parity with the permanent employees. It is submitted that the workman has not established that he has completed 240 days preceding 12 months of the date of termination. It is submitted that before termination, a notice dated 1-1-1998 came to be issued. Therefore, there was due compliance of the provisions of Section 25F of the Act. The termination order dated 1-6-1999 does not require any interference. However, the learned Labour Court, without appreciating the material available on record, erroneously allowed the reference. Learned AGP has further submitted that the workman has expired in 30.6.2024 and, therefore, the question of reinstatement does not remain in existence. No other submissions are made except the above.
7. *Per contra*, learned advocate for the respondent has supported the



judgment and award. It is contended by learned advocate for the workman that the other workmen who were working with the petitioner are granted 25% back wages by modifying the order of grant of 30% of back wages. He has placed reliance upon a decision dated 7.10.2024 in SCA No.2793 of 2019 and allied matters of Coordinate Bench of this Court and submitted that for similar set of employees working under the petitioner, the coordinate bench has modified the order of reinstatement with 30% back wages. In the said petitions, the workmen have attained the age of superannuation during the pendency of proceedings and, therefore, order of back wages was modified from 30% to 25%. The present workman be also granted 25% back wages instead of 30% of back wages as granted by the learned Labour Court. No other submissions are made except the above.

8. I have considered submissions canvassed by learned advocates for the parties and perused the record.
9. The workman was working with the petitioner as a helper and a notice for termination came to be issued on 1-1-1998 and, thereafter, on 1-6-1999 pending the Conciliation Proceedings, terminated the service of workman without prior approval as contemplated under Section 33(1)(a) of the Act. The learned Labour Court considered the evidence of muster roll for the period between 1991-1997 and found that the workman has worked for 20 to 25 days each month. The petitioner did not produce any evidence pertaining to the relevant period of 1-6-1999. In absence of non-production of material evidence, learned Labour Court observed that the workman has completed the service of 240 days preceding 12 calendar months of the date of termination and, thereafter, held that there is a breach of provisions of Section 25F of the Act. So far as the breach of the provisions of Section 25F of the Act is concerned, learned AGP could



not point out any contrary material from the record to nullify the finding of the learned Labour Court. Learned Labour Court granted back wages of 30% considering evidence led by parties with regard to unemployment of workmen. The Coordinate Bench of this Court in SCA No.2793 of 2019 and allied matters has taken a view of modifying the percentage of back wages from 30% to 25%. The workmen is also agreeable to receive back wages at the rate of 25% as other employees have been granted 25% back wages.

10. Since the issue as well as facts involved in the present petition is akin to the facts and issues involved in SCA No.2793 of 2019 and allied matters, I have no reservation in taking the same view which has been taken by the Coordinated Bench of this Court.
11. Resultantly, petition is partly allowed. The impugned judgment and award dated 16.2.2018 passed by learned Labour Court, Valsad in Reference (LCV) No.649 of 2000 is modified. The petitioner shall pay 25% back wages to the workman instead of 30% back wages within a period of *eight weeks* from the date of receipt of this order, failing which, the petitioner shall pay interest at the rate of 6% p.a. to respondents.
12. The petition stand disposed of in above terms. No order as to costs.

(D. M. DESAI,J)

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