



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 6155 of 2024**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE DEVAN M. DESAI

Approved for Reporting	Yes	No
		✓

PASCHIM GUJARAT VIJ COMPANY LTD.
Versus
RAJESHBHAI MULJIBHAI CHAVDA

Appearance:
MR DIPAK R DAVE(1232) for the Petitioner(s) No. 1
AAKASH D MODI(7449) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE DEVAN M. DESAI

**Date : 11/08/2026
JUDGMENT**

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

“(A) This Hon’ble Court may be pleased to issue a writ of mandamus and/or a writ in the nature of mandamus and/ or any other appropriate writ, order or direction to quash and set aside impugned order dated 14.02.2024 passed by Labour Court, Amreli in Reference Case No.8 of 2013 at Annexure-A to the petition as also order dated 08.09.2023 passed in the Exh.1; (Annex.H)

(B) Pending the admission hearing and final disposal of this petition, this Hon’ble Court may be pleased to stay the execution, implementation and operation of the impugned order dated 14.02.2024 passed by Labour Court, Amreli in Reference Case No.8 of 2013 at Annexure-A to the petition as also may be pleased to stay the further proceedings of Reference Case No.8 of 2013 pending before the Labour Court, Amreli;



(C) Any other and further relief or reliefs to which this Hon'ble Court deemed fit, in the interest of justice; may kindly be granted;"

2. Heard learned advocate Mr. Dipak R. Dave for the petitioner and learned advocate Mr. Aakash D. Modi for the respondent.

3. Rule. Learned advocate Mr. Aakash D. Modi waives service of notice of Rule for the respondent.

4. Upon consent and request of learned advocates for the parties, the present petition is taken up for final disposal today.

5. The brief facts of the case are as under:-

5.1. Respondent was appointed on the post of Vidyut Sahayak (Helper) for a period of three years on contractual basis by petitioner. During the course of contractual appointment, as respondent committed serious misconduct Respondent was charge-sheeted. Departmental inquiry was held against the respondent and on the basis of the outcome of the inquiry, respondent was terminated from the service on 17.01.2011.



Against which, respondent filed appeal. The appeal came to be rejected vide order dated 22.02.2011. Against which, respondent filed second appeal, which also came to be rejected on 06.09.2011. Against which, respondent approached learned Labour Court by way of reference. Learned Labour Court in interim application passed an order dated 14.02.2024 holding inquiry to be illegal and reinstated respondent-workman vide Judgment and Award dated 14.02.2024. It was further directed that order for back wages shall be passed on the basis of evidence.

5.2. Being aggrieved and dissatisfied with the Judgment and Order, petitioner is before this Court.

6. Learned advocate for the petitioner has submitted that learned Labour Court has committed an error of law in passing the order of reinstatement without giving any opportunity to the petitioner to produce evidence for the purpose of deciding the validity and legality of the inquiry conducted against the

respondent-workman by the petitioner which has resulted into termination of the respondent from the service. It is further submitted that before passing the order of reinstatement, an opportunity should have been afforded to the petitioner to produce evidence to prove the misconduct of the employee. In support of his contentions, learned advocate for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Cooper Engineering Ltd Versus P P Mundhe* reported in *1975 (2) SCC 661* and contended that the Hon'ble Apex Court while deciding the issue has held that when a case of dismissal of an employee is referred for adjudication, learned Labour Court should first decide as a preliminary issue whether the inquiry has violated principles of natural justice. When the issue is in controversy between the parties, the question must be decided as a preliminary issue. On the decision of inquiry being held defective, the Management / Employer should be given an opportunity to lead evidence. In the present case, learned advocate for the petitioner contended that learned



Labour Court by committing an error of law, reinstated the employee on finding that the inquiry is bad and illegal. It is therefore, submitted that the present petition be allowed. The impugned order be quashed and set aside by remanding the matter back to the learned Labour Court by giving an opportunity to lead evidence for proving the charges levelled against the employee in the departmental proceedings. It is further submitted that liberty be also given to the petitioner to challenge findings on issue No.1, if at all, learned Labour Court holds issue No.1 against the petitioner. Except above, no other submissions are canvassed by learned advocate for the petitioner.

7. *Per contra*, learned advocate for the respondent-employee could not contradict the position of law as enunciated in the case of the ***Cooper Engineering Ltd (supra)***. However, the learned advocate for the respondent-employee has objected to granting permission to challenge any findings on Issue No.1 that has



been recorded against the petitioner by the learned Labour Court and submitted that such liberty should not be granted to the petitioner. Except above submissions, no other submissions are made by learned advocate for the respondent-employee.

8. I have considered the submissions made by learned advocates for the parties and perused the papers. The issue involved in the present petition is in a narrow compass. Learned Labour Court while deciding the reference has held that the departmental inquiry held by the petitioner is illegal and against the principles of natural justice. By holding the departmental inquiry illegal, learned Labour Court committed an error of law reinstating the employee. The position of law is well-settled in cases where learned Labour Court holds that the departmental inquiry and the findings thereof are vitiated by principles of natural justice and the proceedings of departmental inquiry being illegal, learned Labour Court must give an opportunity to the Employer to prove and substantiate the charges levelled

against the employee in the departmental proceedings by leading evidence.

9. In the case of ***Cooper Engineering Ltd (supra)***, the Hon'ble Apex Court has held in paragraph Nos.21 and 22, which are reproduced as under:-

“21. Propositions (4), (6) and (7) set out above are well-recognised. Is it, however, fair and in accordance with the principles of natural justice for the Labour Court to withhold its decision on a jurisdictional point at the appropriate stage and visit a party with evil consequences of a default on its part in not asking the Court to give an opportunity to adduce additional evidence at the commencement of the proceedings or at any rate, in advance of the pronouncement of the order in that behalf ? In our considered opinion it will be most unnatural and impractical to expect a party to take a definite stand when a decision of a jurisdictional fact has first to be reached by the Labour Court prior embarking upon an enquiry to decide the dispute on its merits. The reference involves determination of the larger issue of discharge or dismissal and not merely whether a correct procedure had been followed by the management before passing the order of dismissal. Besides, even if the order of dismissal is set aside on the ground of defect of enquiry, a second enquiry after reinstatement is not ruled out nor in all probability a second reference. Where will this lead to ? This is neither going to achieve the paramount object of the Act namely industrial peace, since the award in that case will not lead to a settlement of the dispute. The dispute, being eclipsed, pro tempore, as a result of such an award, will be revived and industrial peace will again be ruptured. Again another object of expeditious disposal of an industrial dispute (see S. 15) will be clearly defeated resulting in duplication of proceedings. This position has to be avoided in the interest of labour as well as of the employer and in furtherance of the ultimate aim of the Act to foster industrial peace.

22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be



decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the Labour Court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue.. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the Labour Court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication.”

10. It is observed that the petitioner is granted a liberty to challenge the findings of issue No.1, if at all, the findings on issue No.1 are against the petitioner.

11. In view of the law laid down by the Hon’ble Apex Court in the aforesaid decision, learned Labour Court has committed grave error of law and therefore, this Court is of the opinion that the impugned judgment and award is required to be quashed and set aside. Accordingly, present petition stands allowed. The judgment and award dated 14.02.2024 passed by learned Labour Court, Amreli in Reference Case No.8 of 2013 is hereby quashed and set aside by remanding the matter to the learned Labour Court below for fresh consideration on merits in



accordance with law with the aforesaid liberty. Rule is made absolute.

12. The learned Labour Court is directed to decide the reference case as expeditiously as possible preferably within a period of six months from the date of receipt of this order. Further, both the parties are directed to give full co-operation to the learned Labour Court in getting the reference disposed of without seeking unnecessary adjournments.

RINKU MALI

(D. M. DESAI,J)