

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11363 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO
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WESTERN INDIA PLYWOOD LTD

Versus

HIMMATLAL TRIBHOVANDAS RATHOD

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Appearance:

1. Special Civil Application No. 11363 of 1994  
MR D.G. SHUKLA, Ld. Advocate for NANAVATI & NANAVATI  
for Petitioner No. 1  
MR PS CHARI for Respondent No. 1
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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 30/04/2002

ORAL JUDGEMENT

By this petition filed exclusively under Article  
227 of the Constitution, the award of Labour Court,  
Ahmedabad in Reference (LCA) No. 579/85 is called into

question. By virtue of the impugned award dated 14.10.1993, the respondent is awarded reinstatement with full backwages and Rs. 500 by way of cost.

2. Learned Counsel for the petitioner Mr. D.G. Shukla for Messrs Nanavati and Nanavati vehemently and elaborately argued that the Labour Court had exceeded its jurisdiction in making of the impugned award, in so far as in a Reference for reinstatement, the Labour Court had decided the issue of legality or otherwise of the transfer order under which the respondent was required to report for duty at Hyderabad. He further pointed out that even during the course of proceedings before the Labour Court, the petitioner had asserted that the service of the respondent was never terminated and he was required to obey that order, particularly after withdrawal of the Civil Suit filed by him for an injunction against the transfer. He further submitted that in any case the petitioner's Branch at Ahmedabad where the respondent was ordered to be reinstated has been closed since the year 1990 and an award of reinstatement was not capable of being implemented.

3. Going through the impugned award and according to the submissions of the learned Counsel Mr. Chari appearing for the respondent, the findings of fact is to the effect that the respondent was a clerical staff employed at the monthly salary of Rs. 875/- and the right to transfer the respondent to any station in India was nowhere proved by the petitioner. It was also in evidence of the petitioner itself that fresh employees were recruited after the so-called transfer of the petitioner and the date or factum of the closure of the Ahmedabad Branch of the petitioner was not proved. The order of transfer in the aforesaid circumstances and on the basis of evidence, was found by the Labour Court to be mala fide and by way of victimisation and in view of the fact, that after issuance of the order, the charge was taken from the respondent, it clearly and in substance and effect amounted to termination of his service. In this view of the matter, Labour Court was evidently within its jurisdiction in deciding the issue of legality and propriety of the transfer as an incidental issue to find out the real truth and consequences of that order which was termination without compliance with any provision of law.

4. It was however, fairly conceded by the learned Counsel for the respondent that with the passage of time and advancing age of the respondent, he would have eventually retired on 21.9.1996 and therefore, there is

no question of reinstatement at this stage. It was also fairly conceded on instruction of the respondent that he had earned some income by self-employment or otherwise since the year 1992 and therefore he was prepared to waive the backwages for the period subsequent to the year 1992.

5. In the above facts and circumstances, the petitioner having pleaded perversity in the impugned order but having failed to establish it and this Court finding the impugned award to be within jurisdiction of the Labour Court, there is no reason to interfere with either the findings of fact or the resultant order except to accommodate the concessions made on behalf of the respondent. Accordingly, the impugned award and order below it is modified to the extent that the respondent shall be paid full backwages upto 31.12.1992 and, considering his service to be continued thereafter without entitlement to any wages upto the date of his regular retirement i.e. 21.9.1996, the terminal benefits accordingly shall have to be paid to the respondent. Since the litigation has taken almost 17 years after 19 years of actual service of the respondent, the respondent should receive due retiral benefits within a reasonable period now. Therefore, the petitioner is directed to pay to the respondent his legal dues according to this order, within a period of two months from the date of receipt of a copy of this order. The petition is partly allowed and rule is made absolute accordingly with no order as to costs.

(D.H.Waghela, J.)

\*/Mohandas