

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**LETTERS PATENT APPEAL No. 800 of 2000**  
**In**  
**SPECIAL CIVIL APPLICATION No. 8718 of 1998**  
**With**  
**CIVIL APPLICATION No. 10784 of 2000**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE B.J.SHETHNA**  
**HONOURABLE MR.JUSTICE M.C.PATEL**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
  - 4
  - 5 Whether it is to be circulated to the civil judge ?
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**KANCHANBEN SHANKERLAL PANDYA - Appellant(s)**

**Versus**

**MEDHASAN GRAM PANCHAYAT & 4 - Respondent(s)**

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**Appearance :**

MR MP SHAH for Appellant(s): 1, MS. KRUTI M SHAH for Appellant(s): 1,  
MR PS CHARI for Respondent(s) : 1,  
MR SIRAJ GORI, AGP for Respondent(s) : 2 - 4.  
RULE SERVED for Defendant(s) : 5,

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**CORAM : HONOURABLE MR.JUSTICE B.J.SHETHNA**

**and**

**HONOURABLE MR.JUSTICE M.C.PATEL**

**Date : 31/08/2005**

**ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE B.J.SHETHNA)**

Heard the learned counsel for the parties, Ms. Shah

for the appellant and Mr. Chari for the respondent - Panchayat. This is the second round of litigation between the parties. On earlier occasion, the petitioner - teacher approached the Labour Court against her termination which was quashed and set aside by the Labour Court against which the respondent - Panchayat filed Special Civil Application No.10947 of 1995 which was allowed by the learned Single Judge of this court (S.D. Pandit, J. ) on the ground that the Labour Court had no jurisdiction and, therefore, the impugned judgment and award passed by the Labour Court was quashed and set aside. The said order has become final in the sense that it was not challenged further by the present petitioner. Be that as it may.

2. Later on, the petitioner approached this court by way of fresh Special Civil Application No.8718 of 1998 and challenged her termination order straightaway before this court under Article 226 of the Constitution which was dismissed by another learned Single Judge of this court (R.R. Tripathi, J.) in view of the observations made by the learned Single Judge in his order passed in Special Civil Application No.10947 of 1995 by holding that the petitioner will have to go before the Civil

Court. This order dated 5<sup>th</sup> April, 2000 passed by the learned Single Judge of this court dismissing Special Civil Application NO.8718 of 1998 is challenged in this appeal.

3. It is true that while allowing the earlier Special Civil Application No.10947 of 1995 filed by the present respondent - Panchayat, the learned Single Judge of this court observed that the petitioner - teacher will have to go before the Civil Court. But, it may be stated that in that petition, judgment and award passed by the Labour Court declaring her termination bad was challenged by the Panchayat on the ground that the Labour Court had no jurisdiction.

4. It was conceded by Ms. Shah for the appellant - petitioner that the petitioner had alternative remedy of going to the Civil Court against her termination order but that remedy was no more available to her in view of the fact that because of the pendency of the writ petition before this court, the period of limitation of filing suit before the Civil Court against her termination order came to expire. In that view of the matter, though the petitioner had alternative remedy

available to her by way of suit before the Civil Court, practically, she had no alternative remedy and, therefore, we are of the opinion that on this ground alone, the learned Single Judge ought not to have dismissed her Special Civil Application No.8718 of 1998.

5. It is no doubt true that the petitioner had the alternative remedy of suit before the Civil Court but because of the pendency of the petition, that remedy was no more available to the petitioner. Having regard to the peculiar facts and circumstances of the case, we are of the considered opinion that the writ petition of the appellant - petitioner was required to be decided on merits by the learned Single Judge instead of dismissing it on the ground of alternative remedy. In view of the above discussion, this appeal is allowed and the order dated 5<sup>th</sup> April, 2000 passed by the learned Single Judge (R.R. Tripathi, J.) in Special Civil Application No.8718 of 1998 is hereby quashed and set aside and the matter is remanded to the learned Single Judge for deciding the same on merits in accordance with law.

6. Before parting, we must state that without going into the merits of the case and without expressing any

opinion on the merits of the case, this petition is allowed and it will be open to both the learned counsel for the parties to raise all the contentions raised in this appeal as well as in the writ petition before the learned Single Judge. With these observations, this appeal is allowed with no order as to costs.

Civil Application is disposed of as the main appeal itself is allowed.

( B.J. Shethna, J. )

( M.C. Patel, J. )

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