

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 4856 of 2001****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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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 ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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STATE OF GUJARAT - Petitioner(s)**Versus****BIPINCHANDRA PARSHOTTAMBHAI BHATT - Respondent(s)**

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Appearance :

GMR IM PANDYA, ASSTT.GOVERNMENT PLEADER for Petitioner
MR SATYEN B RAWAL for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 31/07/2007****ORAL JUDGMENT**

Shri I.M. Pandya, learned Asstt. Govt. Pleader
for the petitioner; Shri Satyen B. Raval,
learned counsel for the respondent.

2. The petitioner, being aggrieved by the award dated 19.10.2000 passed by the Labour Court, Jamnagar in Reference L.C.J. No. 963/90 [old Reference L.C.R. No.563/88] is before this Court with a submission that the Court below was unjustified in answering the Reference in favour of the petitioner.

3. Shri Pandya, learned AGP for the petitioner has raised two submissions; [i] that the petitioner is not an 'industry' and; [ii] that the workman had not worked for 240 days in 12 calendar months preceding the date of the alleged removal. Shri Satyen B. Raval, learned counsel for the respondent, on the other hand, submitted that the question of jurisdiction of the Labour Court qua the petitioner that it is industry or not, was not raised before the Labour Court and that from exh. 41-attendance register, it would clearly appear that within 12 calendar months preceding 29.12.86, the workman had worked for more than 240 days.

4. From the award made by the learned Labour Court, it only appears that in the written statement,

a plea was raised that the present petitioner is not an industry but it does not appear that at any point of time, a dispute was raised before the Labour Court that the petitioner was not an industry. The Labour Court was never requested to cast an issue on the said question nor question appears to have been argued before the Labour Court at the time of final hearing. If the question was simply pleaded but was not raised at the time of argument, then, it would be deemed that such question has been abandoned.

5. So far as the question that respondent worked for 240 days or not is concerned, from exh. 41, it would clearly appear that the workman had worked for more than 240 days between 1st January, 1986 and 29th December, 1986. In view of Section 25B of the Industrial Disputes Act, 1947, the workman would be deemed to be in continuous service and such person who is in continuous service cannot be terminated except in accordance with Section 25F of the Industrial Disputes Act.

6. I find no reason to interfere. The petition

deserves to and is accordingly dismissed. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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