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

**SPECIAL CIVIL APPLICATION No. 2625 of 2004**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE N.V. ANJARIA**

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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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**BHAVNAGAR DIST.PANCHAYAT & 1 - Petitioner(s)**
**Versus**
**NAVINBHAI BABUBHAI ZAVERI - Respondent(s)**

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**Appearance :**

MR HS MUNSHAW for Petitioner(s) : 1 - 2.
MR KAPIL K ACHARYA for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE N.V. ANJARIA**

**Date : 31/07/2012**

**CAV JUDGMENT**

The challenge in the present petition was directed against judgement and award dated 15.12.2003 of the Labour Court of Bhavnagar in Reference (LCB) No.174 of 1989, whereby the Labour Court ordered reinstatement of respondent workman on his original post with continuity of service and 50% backwages.

2. The petitioner District Panchayat had been running a multipurpose District Training and Service Center at Bhavnagar since 1963. The Center had been imparting training to the students in four different trades, i.e. Carpentry, Welding-cum-Gas Cutter, Turner, Fitter and Workman-cum-Motor Rewinding. It was stated in the petition that the Courses were carried on under the supervision of State Government and the Center had technical staff of six employees and there was one employee engaged for clerical and administrative work. The expenses of salary, stipend to the trainees, etc. were borne out of the grant received from the State Government. A hostel was attached to that Center, which was run by the petitioner Panchayat. The respondent was employed as a part-time Watchman on temporary and ad-hoc basis at the hostel, according to the case of petitioner.

3. The respondent workman invoked the jurisdiction of Labour Court complaining that his services were illegally terminated. In his statement of claim, the workman stated that he was serving in the petitioner-Panchayat since last one and half years and was lastly getting monthly pay of Rs.450/-. It was his grievance that without assigning any reason, his service were orally terminated with effect from 31.01.1989. It was stated that inspire of his request, he was not taken back in service. It was workman's case that in terminating his services, the employer had not followed the provisions of section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as `the Act' for sake of brevity).

3.1 Heard learned advocate Mr. Rajesh Chauhan holding brief for learned advocate Mr. H.S. Munshaw for the petitioner and Mr. Kapil K. Acharya,

learned advocate for the respondent-workman.

3.2 Learned advocate for the petitioner submitted that the Tribunal committed an error in concluding that there was a breach of section 25F of the Act. It was submitted that the said provision would not apply because the appointment of the respondent was temporary. He invited attention of the court to the advertisement dated 17.01.1987 and the order dated 18.03.1987 pursuant to which the respondent workman was appointed. It was submitted that in the advertisement as well as in the letter of appointment it was clearly mentioned that the respondent was employed temporarily for 29 days and during that period he was to work as Rojamdar. He submitted that it was also a condition of appointment that the services were liable to be terminated at any time without notice. It was next submitted that the post in question at the District Training Center was subject to sanction to be granted from the State Government from time to time and that the sanction was used to be given for a specific period. He submitted that the services of the workman were discontinued from 31.01.1989 as there was no sanction available from the State Government.

3.3. Learned advocate for the petitioner further submitted that in the facts of the case, termination of the respondent did not amount to `retrenchment', and therefore, provisions of section 25F would not apply. In support of his contentions, he relied on decisions in ***Municipal Council, Samrala v. Raj Kumar [(2006) 3 SCC 81], Karnataka Handloom Development Corporation v. Mahadeva Laxman Raval [(2006) 13 SCC 15] and Regional Manager, SBI v. Mahatma Misra [(2006) 13 SCC 727***.

3.4. Learned advocate for the respondent, on the other hand submitted that labour court reached a clear finding that the requirements of section 25F of the Act were not complied with. It was submitted that such finding was recorded on the basis of evidence (Exh.19) which was of the witness of the first part employer, that the workman was in service from 18.03.1987 till 13.01.1989 without any break. It was submitted that thus the workman had worked continuously for two years. He relied on the statement at Annexure 13 of the petition, which showed the details of number of days in a month for which the workman had worked during that period. He submitted also that the duty requirements of the workman were six hours a day, and therefore, he was not a part-timer. He further submitted that the provisions of section 25F of the Act were mandatory and once it was shown that the workman had completed continuous service of 240 days, his termination by the petitioner amounted to a `retrenchment' making it necessary to follow the requirements of section 25F. According to him, Labour Court was justified in directing the reinstatement with 50% backwages.

4. The Labour Court after considering the evidentiary material before it came to conclusion that the workman was appointed on 18.03.1987 and he worked upto 31.08.1989 until his services came to be terminated. The Labour Court held that there was evidence on record substantiating and proving the case of the workman that he had continuously worked for 240 days. The Labour Court, therefore, held that there the compliance of conditions envisaged in section 25F of the Act were required and that the mandatory provisions having been contravened, the workman was entitled to the relief of reinstatement and consequential backwages.

5. The evidence on record was indicative of the nature of appointment of the petitioner and the status of his services. The letter of appointment of the petitioner dated 18.03.1987 (Exh.14) contained a stipulation that his appointment was for 29 days and on expiry of that period, his services would automatically stand terminated. Also, in the advertisement initially issued for inviting applications for the post in question of hostel chowkidar, the conditions on which the appointment would be made, were mentioned. It was mentioned that the post was subject to sanction by the State Government, that the appointee would be liable to be relieved at any time without notice and thirdly salary as Rojamdar would be paid. It was also not disputable that the workman was engaged as Watchman in the Hostel of the Center run by the petitioner, for which the State Government used to provide grant and used to sanction the post in question. The last sanction granted by the State Government was on 26.10.1998 for the year 1988-99.

5.1 On the above set of facts manifested from the evidence on record, the rival case was required to be seen. Section 25F of the Act would apply in cases where the termination of service is `retrenchment'. Section 2(oo) of the Act defines `retrenchment' to mean termination of services which is not by way of punishment inflicted pursuant to a disciplinary action. The provision also categorises the situation in which the termination would not amount to retrenchment. The relevant part of section 2(oo) is extracted hereunder:-

> *“2(oo) `retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -*
> *(a) xx xx*
> *(b) xx xx*

*(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or*
*(c) xx xx"*

5.2 The Apex Court in ***Rajkumar (supra)*** analysed and discussed the nature and scope of section 2(oo)(bb) of the Act. It was observed that clause (oo)(bb) contains an exception. It is divided in two parts. The first part contemplates termination of service of the workman as a result of non-renewal of contract of employment on its expiry. The second part postulates the termination of such contract of employment in accordance with the stipulation contained in that behalf. In that case, the offer of appointment contained a term that the contract was short-lived one and was liable to termination as and when the employer deemed it fit and proper. The employer had understood the same. It was held that in view of such factual position, the Labour Court and the High Court erroneously proceeded on the basis that the case fell under first part of section 2(oo)(bb).

5.3 In ***Karnataka Handloom Development Corporation (supra)*** the facts were more or less similar to the case on hand. The appointment given to the respondent of that case as an Expert Weaver was for a fixed period on contract basis on a fixed monthly pay. The appointment letters mentioned that respondent's appointment with Karnataka Handloom Corporation was purely contractual for a fixed period. It was held that respondent was employed for time-bound specific term. It was held that the appointment being purely contractual and for a fixed period, such a case would fall under section 2(oo)(bb) and there was no necessity for compliance with section 25F of the Act. Similarly in ***Mahatma Misra (supra)*** the Supreme Court

reiterated that a temporary employment where the termination was in terms of the contract of employment, it would not attract section 25F and section 25H of the Act.

5.4 In ***Municipal Council, Samrala v. Sukhwinder Kaur [(2006) 6 SCC 516]*** the Supreme Court had an occasion to deal with the issue of applicability of section 2(oo)(bb) in respect of a case where the workman was appointed on contractual and temporary basis and with condition that her services could be terminated without notice. The Supreme Court observed:

> *"7. ... she was appointed on a contractual basis. The appointments were temporary ones. She was aware that her services could be terminated without notice. She accepted the terms and conditions of the said offers of appointments without any demur.*
> *9. Although there was no fixed period of contract of employment between the employer and the workman concerned and thus, no question of its renewal on its expiry, but there existed a stipulation in the contract that the Executive Officer has the power to dismiss her without issuing any notice. The question, which now arises for consideration, is whether Section 2(oo)(bb) of the Act is attracted to the facts and circumstances of this case."*

6. The facts of the present case are similar to the facts involved in the decisions aforementioned. The appointment of the respondent was contractual. It was circumscribed by the conditions that it was temporary and for specific period, and would be terminable on the expiry of the period. Period of 29 days was mentioned in the letter of appointment dated 18.07.1987. There was also a condition incorporated that the services could be dispensed without assigning any reason or without giving any notice. Indeed, the nature of appointment was conveyed in the advertisement itself which was issued prior to the appointment. The respondent workman was aware of those conditions attached to his appointment and with knowledge

about the status of his service, he accepted the appointment.

6.1 Furthermore, the continuance of post held by the respondent in the aforesaid capacity was dependent upon the sanction of the State Government. The Government used to sanction the post from time to time. The letters dated 10.10.1996, 04.05.1987 and 26.10.1988 of the Industries and Mines Department sanctioning the post from time to time for specified period, which are on record of the petition. It was indisputably shown that there no sanction for the post was accorded after 28.02.1989, and the last sanction which was as per the order dated 26.10.1988. The termination of the services of the petitioner was therefore in accordance with the conditions of his appointment only. In the above light, the termination could not be treated as retrenchment so as to attract the provisions of section 25F of the Act. It was not incumbent upon the employer, therefore, to observe conditions in section 25F of the Act before ending workman's services. The Labour Court failed to correctly appreciate the nature of appointment of workman and did not properly considered the conditions attached to it.

7. Once it was clear on facts that the termination of the respondent did not fall within the meaning of `retrenchment' under section 2(oo) of the Act, the aspect whether the workman had completed 240 days of service was rendered immaterial. Once the case was covered under section 2(oo)(bb) mere completion of 240 days of service is of no avail. The Apex Court in ***Karnataka Handloom Corporation (supra)*** observed precisely on the point as under:

> *“We have perused all the appointment letters dated 14-1-1991, 24-2-1992, 10-2-1993, 3-3-1993 and 30-11-1993 produced by the respondent as annexures which consistently and categorically state that the respondent's*

*appointment with the Corporation was purely contractual for a fixed period. The respondent was engaged only under the Vishwa programme/Scheme which is not in existence (sic any longer). Now the Scheme came to an end during August 1994; the respondent was also not governed by any service rules of the Corporation. The Corporation put an end to the contract w.e.f. 31-8-1994 which, in our opinion, cannot claim that his services should be continued because the number of 240 days does not apply to the respondent inasmuch as his services were purely contractual. The termination of his contract, in our view, does not amount to retrenchment and, therefore, it does not attract compliance with Section 25-F of the ID Act at all."*

(para 18)

8. Therefore, the contention of learned advocate for the respondent that since workman had completed 240 days, conditions of section 25F would operate could not be countenanced. The finding of Labour Court that the workman had completed 240 days lost its relevance to be inconsequential once it could be established that the termination of the workman was outside the purview of section 2(oo) and was covered under section 2(oo)(bb). Even if the workman was shown to have completed 240 days of service, the contractual and temporary status and the conditions attached to his appointment which were cogently established, excluded applicability of provisions of section 25F of the Act as termination could not be characterised as `retrenchment'. The findings of the Labour Court that since the workman had completed 240 days section 25F would apply was like putting the cart before the horse inasmuch as on facts no conclusion was possible that there was a retrenchment and question of compliance with the conditions of section 25F did not arise.

9. For the foregoing reasons and discussions, the impugned judgment and award dated15.12.2003 in Ref. LCB No.174 of 1989 passed by the Labour Court, Bhavnagar can not be maintained. The same is hereby

quashed and set aside.

10. Rule is made absolute. There shall be no order as to costs.

**(N.V. ANJARIA, J.)**

**(SN DEVU PPS)**