

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 2594 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 2651 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 2652 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 2653 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 2833 of 2015****With****R/SPECIAL CIVIL APPLICATION NO. 5830 of 2014****With****R/SPECIAL CIVIL APPLICATION NO. 5831 of 2014****With****R/SPECIAL CIVIL APPLICATION NO. 5832 of 2014****With****R/SPECIAL CIVIL APPLICATION NO. 5833 of 2014****With****R/SPECIAL CIVIL APPLICATION NO. 5834 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE K.M.THAKER****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>Yes</b>
2	To be referred to the Reporter or not ?	<b>No</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>No</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>No</b>

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**EXECUTIVE ENGINEER, P.H.WORKS DIVISION, GUJARAT STATE  
WATER SUPPLY AND SEWERAGE BOARD**

**Versus****HON. PRESIDING OFFICER, LABOUR COURT NO.3,**

Appearance:

MR RITURAJ M MEENA(3224) for the PETITIONER(s) No. 1,2

MR ARISH L SAIYED(5696) for the RESPONDENT(s) No. 2

MR K I KAZI(5030) for the RESPONDENT(s) No. 2

RULE SERVED(64) for the RESPONDENT(s) No. 1

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**CORAM: HONOURABLE MR.JUSTICE K.M.THAKER**

**Date : 30/04/2018**

**ORAL JUDGMENT**

1. Heard Mr. Meena, learned advocate for Gujarat State Water Supply and Sewerage Board and Mr. Kazi, learned advocate for the concerned workman.

2. In captioned group of 10 petitions, five petitions viz. Special Civil Application No. 2594 of 2015, Special Civil Application No. 2651 of 2015, Special Civil Application No. 2652 of 2015, Special Civil Application No. 2653 of 2015 and Special Civil Application No.2833 of 2015 are filed by the board (employer) whereas other five petitions i.e. Special Civil Application No.5830 of 2014, Special Civil Application No.5831 of 2014, Special Civil Application No.5832 of 2014, Special Civil Application No.5833 of 2014 and Special Civil Application No.5834 of 2014 of 2014 are filed by the concerned workman (original claimant before learned Labour Court).

3. The employer and concerned workman are aggrieved by same award and both parties to the dispute, upon being aggrieved by very same awards have taken out respective petitions. Differently put, captioned petitions are cross petitions.

3.1 In five reference cases viz. Reference (L.C.R.) No. 11 of 2001, 13 of 2001, 14 of 2001, 17 of 2001 and 18 of 2001 learned Labour Court passed similar but separate awards wherein learned Labour Court has recorded identical findings of fact and passed similar directions against the employer (board) except the variation in the amount awarded towards lumpsum compensation.

3.2 The opponent employer in all reference cases is the same board i.e. Gujarat State Water and Sewerage Board (hereinafter referred to as the “Board”).

4. The facts involved in reference cases are also almost similar. Learned advocates for the contesting parties have put forward similar submissions for their respective clients and similar contentions in respect of all petitions are raised

by the employer and the concerned workman.

4.1 Since almost identical facts and common issues are involved, captioned petitions are heard together at the request of learned advocates and are decided by present common decision.

5. So far as factual background is concerned it has emerged from the record and from the rival submissions that five employees of the board raised industrial dispute with the allegation that the employer illegally terminated their service. Appropriate government referred the dispute for adjudication. Learned Labour Court registered said dispute by way of separate reference i.e. Reference (L.C.R.) No. 11 of 2001, 13 of 2001, 14 of 2001, 17 of 2001 and 18 of 2001.

5.1 In the reference cases the claimants filed separate but identical statements of claim. The only difference in the details mentioned in the statement of claim was with regard to the date from which the concerned claimant came to be engaged on daily wage basis by the board and the total tenure of his service with the board.

5.2 With regard to other aspects the claimants mentioned similar details and identical allegations.

6. Briefly stated the case set up by the concerned claimant and their allegations and contentions are recapitulated by the learned Labour Court in paragraph No. 3 of the award.

6.1 The claimants alleged that they joined service with the opponent board as daily wagers, on different dates. They were engaged for maintenance of pipeline as valve operators. They also alleged that the opponent board abruptly terminated their service on 8.2.2000. Their service allegedly came to be terminated without following procedure prescribed by law and in violation of statutory provision viz. Section 25F, Section 25G and Section 25H of the Industrial Disputes Act, 1947 and that they had worked regularly and continuously for more than 12 months and for almost 3 to 7 years, and that the board terminated their service without notice and payment of compensation.

6.2 With such allegation the claimants demanded that

they should be reinstated in service with all benefits.

7. The board, upon service of notice by the learned Labour Court, appeared before learned Labour Court and filed reply. Like the claimants the board also filed almost identical reply in respect of each case. The details of the facts and contentions mentioned by the board in its reply are narrated by the learned Labour Court in paragraph No. 4 of the award.

7.1 The gist of the contention raised by the board is that the claimants were engaged irregularly and without following procedure prescribed for selection and recruitment and that the claimants were engaged on adhoc and daily wage basis for temporary period and that they were engaged intermittently depending on exigency of work. They were engaged for casual work. According to the board it did not breach any statutory provision and that the claimants being daily wagers were not entitled for the protection fund under Section 25F of the I.D. Act since they had not worked regularly and continuously. With the said submission the board opposed the reference cases.

8. When the parties completed their pleadings learned Labour Court received oral and documentary evidence from both sides. After parties closed their evidence, learned Labour Court heard rival submissions. Upon conclusion of the proceedings learned Labour Court considered material available on record and passed impugned award. Learned Labour Court rejected the allegation about breach of Section 25G and Section 25H of I.D. Act. However, learned labour Court held that the employer committed breach of Section 25F of the I.D. Act. Having reached such conclusion learned Labour Court awarded lumpsum compensation to the claimants.

8.1 Feeling aggrieved by said award the claimants filed Special Civil Application No.5830 of 2014, Special Civil Application No.5831 of 2014, Special Civil Application No.5832 of 2014, Special Civil Application No.5833 of 2014 and Special Civil Application No.5834 of 2014 with the request that the award may be set aside to the extent learned Labour Court has denied the relief of reinstatement and backwages. After claimants filed above mentioned

petitions, the employer, probably to counter said petitions filed by the claimants, filed Special Civil Application No. 2594 of 2015, Special Civil Application No. 2651 of 2015, Special Civil Application No. 2652 of 2015, Special Civil Application No. 2653 of 2015 and Special Civil Application No.2833 of 2015.

8.2 The details with regard to the reference filed by each claimant, date of award, the petition filed by the claimants, cross petition filed by the board, the amount awarded by the learned Labour Court towards lumpsum compensation and total tenure of service of each claimant, are summarized in tabular statement which reads thus:-

Sr. no.	Party name	SCA by board	SCA by workman	Ref. Nos.	Date of award	Amount of compensation	Tenure of service
1	Nijam Habib Movar	2833/15	5832/14	18/01	19.10.2013	9500	1994-8.2.2000 (6 years)
2	Mummohammed Habib Katiya	2653/15	5834/15	17/01	19.10.2013	10000	1993-8.2.2000 (7 years)
3	Anant Khindas Himavat	2651/15	5833/14	11.01	19.10.2013	9500	1994-8.2.2000 (6 years)
4	Kamleshbhai Bharwad	2652/15	5830/14	13/01	19.10.2013	8000	1997-8.2.2000 (3 years)
5	Bharat Gami	2594/15	5831/14	14/01	19.10.2013	9500	1995-8.2.2000 (5 years)

9. Mr. Kazi, learned advocate for the claimants submitted that the learned Labour Court, after examining material available on record, reached to the conclusion that the



board committed breach of Section 25F of the I.D. Act while terminating service of the claimants and that therefore when breach of statutory provision is established, learned Labour Court ought to have granted relief prayed for by the claimants i.e. reinstatement and backwages. He submitted that by denying the said benefit which is normal consequence when termination is found to be illegal, learned Labour Court acted arbitrarily and committed error in exercising jurisdiction. Mr. Kazi, learned advocate of the claimants submitted that in view of the fact that statutory breach is established the claimants should be awarded reinstatement with consequential benefits. He alternatively submitted that even otherwise, the compensation awarded by the learned Labour Court is too less, more particularly in view of the period of service rendered by the claimants. With the said submission learned advocate for the claimants submitted that the petitions filed by the claimants may be allowed and the petitions filed by the board may be rejected.

10. Mr. Meena, learned advocate for the board submitted that the learned Labour Court committed error in holding that the board committed breach of Section 25F of I.D. Act.

According to learned advocate for the board the said conclusion by learned Labour Court is erroneous and unjustified. According to learned advocate for the board, the board did not commit breach any provision and the claimants failed to establish that the board committed breach of any provision. According to learned advocate for the board, though learned Labour Court rightly rejected the allegation about breach of Section 25G and Section 25H of the I.D. Act, however the Court committed error in holding that the board committed breach of Section 25F of the I. D. Act and that therefore the awards deserve to be set aside. He submitted that the Court should not have granted any relief and the order granting lumpsum compensation is unjust and that therefore the award may be set aside. The petitions filed by the board may be allowed and the petitions filed by the claimants may be rejected.

11. I have considered rival submissions and material available on record. Also considered awards passed by the learned Labour Court.

12. From the award and from the material available on

record, it has emerged that there is no dispute about fact that

(a) the claimants were engaged irregularly and without following procedure prescribed for selection and recruitment

(b) the claimants were engaged on adhoc basis for casual work

(c) the claimants were engaged as daily wager (on daily wage basis)

(d) the claimants were not engaged on any vacancy against any permanent post and / or on regular establishment of the board

(e) total tenure of the claimants service was about 3 years (in one case), 6 years (in 2 cases) 5 years (in one case) and 7 years (in one case).

13. It is also not in dispute that the claimants could not place any documents related to their appointment and / or termination (i.e. appointment order or order terminating their service and such other documents). The claimants also did not place any material on record which would establish rate of wage and / or their attendance.

13.1 On this count however, it is relevant to note that undisputedly the board did not issue any document to the claimants. The board did not issue identity card and / or wage register and / or attendance card.

13.2 In that view of the matter, even otherwise, it was not possible for the claimants to place on record any documents related to above mentioned aspects.

13.3 It is pertinent to note that the said documents were in exclusive possession of the board.

13.3 In this view of the matter, the claimants had submitted purshis before learned Labour Court and demanded that the board should place on record attendance register and wage register, salary voucher and seniority list for the period from 1991 to 2000.

13.4 The board, however, did not place the said documents on record. On the other hand the claimants asserted, during their evidence that, during the tenure of their service with the board they worked continuously and regularly and they had worked for 240 days in each year as well as in

preceding 12 months and that the employer did not provide relevant material.

14. In this view of the matter, learned Labour Court was left with no alternative but to draw adverse inference against board that the claimants had worked, though as daily wagers, for more than 240 days.

14.1 The fact that the claimants worked for more than 12 months was not disputed even by the board. As mentioned earlier one claimant had worked for 7 years (from 1993 to 2000), one claimant had worked for 5 years (from 1995 to 2000), one claimant had worked for 3 years (from 1997 to 2000) and two claimants had worked for 6 years (from 1994 to 2000.).

15. At this stage it is also relevant to note that the board had, undisputedly, not served notice to the claimants and had not paid retrenchment compensation in accordance with the procedure prescribed under Section 25F of the I.D. Act.

15.1 In light of the fact that the claimants had,

undisputedly, worked for more than 12 months and in view of the findings of fact recorded by learned Labour Court that the claimants had worked for more than 240 days, the provision under Section 25F of the I.D. Act was undisputedly attracted.

15.2 It is not the case even of the board that it had followed procedure prescribed by section 25F of the I.D. Act, while terminating service of the claimants.

15.3 The board also did not dispute that it had terminated service of 5 claimants on 8.2.2000 without serving notice and without payment of compensation.

15.4 The board also did not dispute the fact that before terminating service of the claimants on 8.2.2000 it had not prepared and published seniority list, before 7 days as prescribed under Rule 81 of the Industrial Disputes (Gujarat) Rules.

16. At this it is relevant to note that the learned Labour Court has specifically recorded in paragraph No. 5 of the award that the witness of the board admitted that the

seniority of daily wagers is maintained and that if required he will place said details on record. Despite said statement and declaration by board's witness the board did not place any material on record.

16.1 When above mentioned facts are considered conjointly then finding recorded by learned Labour Court viz. that the claimants worked, though as daily wager for 240 days in preceding 12 months and that therefore Section 25F attracted and applicable in case of claimants and that the board did not follow the procedure prescribed under Section 25F of the I.D. Act and thereby the board committed breach of said provision, cannot be faulted.

16.2 It is also pertinent to note that in paragraph No. 9 of the award learned Labour Court has also taken into account that the claimants failed to place any evidence on record to establish that any person junior to the claimants was continued in service after the board terminated their service.

16.3 The claimants also failed to mention name of any person junior to them who was continued in service.

Learned Labour Court also recorded that the claimants failed to mention name of any person who was subsequently appointed (i.e. who came to be employed by the board after their services were terminated and without first offering work to the claimants).

16.4 Learned Labour Court having taken note of the said fact (that the claimants failed to place any evidence on record to establish breach of Section 25G and Section 25H of the I.D. Act) rejected to accept and believe allegation about breach of said provision. Accordingly learned Labour Court, by way of finding of fact recorded that the claimants failed to establish breach of Section 25G and 25H of the I.D. Act.

16.5 On reading the award it emerges that the said finding of fact is based on appreciation of evidence and that the learned Labour Court has not committed any error in recording said finding.

17. Under the circumstances, said findings of fact cannot be faulted.



18. Having reached the conclusion that the board committed breach of Section 25F of the I.D Act, learned Labour Court addressed the issue about appropriate relief.

19. At this stage it is relevant to note that while deciding issue of appropriate relief learned Labour Court has rightly applied principle of “manner and method of appointment” as well as “nature of appointment” and “length of service”.

19.1 After taking into account and applying said principle learned Labour Court reached to the conclusion that in present case appropriate relief would be to award lumpsum compensation, instead of reinstatement.

19.2 In this view of the matter, it is appropriate to note that Hon'ble Apex Court has observed and held that in appropriate cases learned Labour Court can mould the relief and merely because in a given case termination is held to be illegal, relief in form of reinstatement and / or backwages should not follow mechanically. In appropriate cases learned Labour Court, after considering relevant factors, may mould the relief and award lumpsum compensation in lieu of reinstatement and other benefits.

19.3 Learned Labour Court also seems to have overlooked that except one claimant, which rendered service for three years before termination, other workmen had worked for five years and that therefore they were entitled for gratuity as well as provident fund. Since any amount towards said benefits have not been paid, the said loss of amount deserves to be accommodated in the amount awarded by way of compensation.

20. In present case, there were ample reasons / circumstances as well as sufficient material on record to hold that appropriate relief in present case, would be lumpsum compensation instead of reinstatement and other benefits.

20.1 In this context it is relevant to recall that the claimants were engaged irregularly and without following procedure prescribed by law and the claimants were engaged on adhoc basis for casual work. The claimants were engaged as and they worked as daily wagers. The tenure of their service is, on average about 5 years (ranging from 3 to 7 years). The claimants were not regular and permanent employees of the

board and they had only worked against vacancy of permanent post and / or regular establishment.

20.2 When these aspects are taken into account it emerges that the decision by learned labour Court to award lumpsum compensation, instead of reinstatement and other benefits, is just and correct and proper and does not warrant interference.

21. Learned Counsel for the board has failed to establish that the learned Labour Court has committed any error in holding that the claimants worked regularly and continuously for more than 12 months and that their service came to be terminated without following procedure prescribed under Section 25F of I.D. Act and therefore termination is illegal.

22. Learned advocate for the board failed to show any material on record of captioned petitions that the findings recorded by learned Labour Court are contrary to evidence which was available on record and / or that the learned Labour Court failed to take into account or ignore evidence which was available on record and/ or that the findings

recorded by learned Labour Court are perverse.

23. Therefore, petitions filed by the board must fail.

24. On the other hand learned advocate for the claimants also failed to establish that the learned Labour Court committed any error in exercising discretion viz. while awarding lumpsum compensation instead of reinstatement and backwages.

24.1 The facts and circumstances establish that the learned Labour Court is right and justified in holding that in present cases appropriate relief would be to award of lumpsum compensation instead of reinstatement and other benefits.

24.2 However, learned advocate for the claimants is right in his one submission viz. that the compensation awarded by the learned Labour Court is less and deserves to be enhanced.

25. In view of this Court, the amounts awarded by the learned Labour Court deserves modification and are required to be enhanced, more particularly in view of the fact that the breach of Section 25F of the I.D. Act is

established and accepted by learned Labour Court.

26. It is true that in paragraph No. 9 of the award learned Labour Court has recorded justification for awarding lumpsum compensation as well as for quantification of the amount of compensation. However, learned Labour Court has committed error in considering the casual / stray work undertaken by the claimants for their livelihood as gainful employment. By considering such stray / casual work as gainful employment and on that basis reducing / restricting the amount towards lumpsum compensation to meagre – minimum level, the learned Labour Court committed error in exercising discretion.

27. On overall consideration of facts of the case this Court is of the view that the rate of lumpsum compensation awarded by learned Labour Court deserves to be modified and enhanced.

28. Therefore so far as quantum of lumpsum compensation is concerned, the award to that extent is modified and following order is passed:-

The finding of fact recorded by learned Labour Court

about breach of Section 25F of the I.D. Act is confirmed.

The findings of fact recorded by learned Labour Court that the board did not breach of Section 25G and 25H of the I.D. Act is also confirmed.

The discretion exercised by the learned Labour Court and the decision to hold relief and award lumpsum compensation instead of reinstatement and other benefits is also confirmed.

However, the decision of the learned Labour Court determining amount / quantum of lumpsum compensation awarded to each claimant is set aside and modified as mentioned in following statement:-

<b>Sr. No.</b>	<b>Party name</b>	<b>Ref. Nos.</b>	<b>Revised / enhanced amount of compensation (Rs.)</b>
1	Nijam Habib Movar	18/01	52,000/-
2	Mummohammed Habib Katiya	17/01	57,000/-
3	Anant Khindas Himavat	11/01	52,000/-
4	Kamleshbhai Bharwad	13/01	40,000/-
5	Bharat Gami	14/01	47,000/-

Consequently the petitions filed by the board i.e. Special Civil Application No. 2594 of 2015, Special Civil Application No. 2651 of 2015, Special Civil Application No. 2652 of 2015, Special Civil Application No. 2653 of 2015 and Special Civil Application No.2833 of 2015 are rejected.

Rule is discharged in the petitions filed by the employer. The petitions filed by claimants i.e. Special Civil Application No.5830 of 2014, Special Civil Application No.5831 of 2014, Special Civil Application No.5832 of 2014, Special Civil Application No.5833 of 2014 and Special Civil Application No.5834 of 2014 of 2014 are partly allowed. Rule is made absolute to the aforesaid extent in the petitions filed by the claimants.

Orders accordingly.

SURESH SOLANKI

**Sd/-**  
**(K.M.THAKER, J)**