IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12240 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

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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 or any order made thereunder ?	

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Versus

INDEXT/C INDUSTRIAL EXTENSION COTTAGE & 1 other(s)

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Appearance:
MR DS VASAVADA(973) for the Petitioner(s) No. 1
MS HARSHAL N PANDYA(3141) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE SANDEEP N. BHATT**

Date : 05/08/2022

CAV JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner – workman has challenged the legality and validity of the impugned award dated 01.04.2008 passed by the Labour Court,

Ahmedabad in Reference (LCA) No.1674 of 1999, by which the Labour Court has rejected the Reference.

2. Heard learned advocates.

3.1 Learned advocate for the petitioner has submitted that the impugned judgment and award passed by the learned Labour Court is illegal, arbitrary, violative of Articles 14 & 21 of the Constitution of India as well as contrary to the mandatory provisions of the Industrial Disputes Act, 1947.

3.2 He has submitted that the Labour Court has patently erred in not coming to the conclusion that the petitioner had joined services with the respondent on 09.02.1994 and has served till 31.03.1999. He has submitted that the learned Labour Court ought to have held that the contractual appointment was a camouflage and as a matter of fact, the petitioner has joined on 09.02.1994 and at that point of time, no order of appointment was issued to the petitioner. He has further submitted that the learned Labour Court ought to have held that the notification of fixed term appointment is already cancelled and therefore, the question of Section

2(oo)(bb) of the Industrial Disputes Act, 1947 does not apply in the facts of the present case.

3.3 He has further submitted that the learned Labour Court ought to have held that the petitioner was a victim of sexual harassment. He has submitted that though the quashment of the criminal complaint does not prove that the immediate superior Mr.Jagatbhai B. Patel, is innocent, because yardstick in criminal laws and the labour laws is different. He has submitted that the learned Labour Court has failed to appreciate the clinching evidence, which was produced at Exh.35.

3.4 He has further submitted that the learned Labour Court ought to have appreciated that the appointment of the petitioner was not contractual, but it was on permanent. He has further submitted that the learned Labour Court ought to have interpreted the contents of the covering letter issued to the petitioner by senior officer of the respondent dated 15.12.2005, wherein it is specifically mentioned that the appointment is not contractual but on temporary basis. He has further submitted that the learned Labour Court ought to have appreciated that the provisions of Section 2(oo)(bb) of the

Act applies only for contractual appointment and that too appointed for a fixed term, but the period of five years cannot be construed to be a fixed term appointment as contemplated under Section 2(oo)(bb) of the Act.

3.5 He has further submitted that the learned Labour Court has misinterpreted the contents of the contractual appointment because the longtime contractual appointment is also held to be an unfair labour practice and it definitely attracts the provisions of Sections 25(F), (G) and (H) of the Industrial Disputes Act, 1947. He has further submitted that the learned Labour Court ought to have held that the notification of fixed term appointment is already cancelled as indicated in the averments above, and therefore, the question of Section 2(oo)(bb) of the Act does not attract in the facts of the present case.

3.6 He has further submitted that the learned Labour Court has ignored the clinching evidence, which proves that the petitioner has continuously worked for five years. He has submitted that the learned Labour Court ought to have held that issuance of the appointment order in form of the contractual appointment is an

afterthought, but as per the resolution of the Board of Directors, it was a temporary appointment and therefore, even to the temporary employee, the provisions of Section 25 (F), (G) & (H) of the Industrial Disputes Act, 1947 get attracted. He has further relied on the the judgment in the case of **K.V. Anil Mithra Vs. Shree Sankaracharya Univeristy of Sanskrit** reported in **2022 (172) F.L.R. 250** and also judgment in the case of **Virandra Ramnarayan Shukla Vs. Services Auto Petrol Pump** reported in **2022 (2) GLR 407.**

3.7 He has further submitted that the learned Labour Court ought to have appreciated that even after the termination of the appointment, new recruitment has been given and therefore, such an appointment cannot be termed as contractual appointment. In support of his submissions, he has relied on the decisions rendered by the Hon'ble Supreme Court of India in the case of : (i) ***K.V. Anil Mithra (supra)*** and (ii) ***Virendraprasad Ramnarayan Shukla (supra).***

3.8 He has further submitted that the learned Labour Court ought to have held that such termination amounts to victimization as the petitioner lodged a police

complaint regarding sexual harrasment by her superior Mr.Jagatbhai B. Patel and the Authorities had taken cognizance of the said complaint. He has submitted that the learned Labour Court has patently erred in not taking into consideration the fact of lodging the complaint and the authority had taken the cognizance of the same.

3.9 He has submitted that the impugned judgment and award is otherwise illegal and arbitrary, therefore, the same is required to be quashed and set aside.

4.1 *Per contra*, Ms. Harshal N. Pandya for the respondent - authority has submitted that impugned judgment and award passed by the learned Labour Court is just and proper.

4.2 She has further submitted that the learned Labour Court has specifically found that the present petitioner is appointed as a Gujarati Steno/Typist 01.04.1998 on contract basis for one year on fixed salary of Rs.2,800/-. She has further submitted that as per consent letter produced at Exh.21, the petitioner workmen has agreed to the terms and conditions of the said appointment. She has further submitted that the document, which is

produced at Exh.20 mare particularly para 7 of that document clearly indicates that the workman has to render services as per the duties given to him by the institute in reasonable and satisfactory manner.

4.3 She has further submitted that if we read Section 2(oo)(bb) of Industrial Disputes Act, 1947, the definition of retrenchment clearly indicates that if the services, rendered by the employee/workman, is terminated as per the conditions of the contract then it cannot be considered as retrenchment, and therefore, she has categorically submitted that the appointment is made on 01.04.1998 as per document at Exh.20 for one year, therefore, on 31.03.1999, the services of the present petitioner automatically comes to an end.

4.4 She has further submitted that the learned Labour Court has rightly relied on the judgment of the Hon'ble Apex Court in the case of **State of Karnataka and Others Vs. Uma Devi** reported in **2006 II C.L.R. 261** and more particularly para 47, by which the Hon'ble Apex Court has held that the employee/workman, who is appointed by the oral order, cannot be entitled to get the benefit a Government Employee and therefore, she

has submitted that the Reference made by the present petitioner is rightly rejected by the learned Labour Court.

4.5 She has pointed out from the impugned judgment that the petitioner has alleged that the management of the present institute has forcibly taken the application by giving threats to terminate the services of the present petitioner and accordingly, the present petitioner has signed on the application under the coercion the petitioner has not willingly signed such document, but the learned Labour Court has rightly recorded the findings that when such abovementioned such contention is pleaded in the statement of claim in para 6, then on the other hand the petitioner in her oral deposition has stated that she has neither given any application nor signed any consent letters of appointment on the contract base, and therefore, learned advocate Ms. Pandya has submitted that looking to the contradictory statements made in the pleadings and proof by the petitioner, the learned Labour Court has rightly come to the conclusion that the case of the petitioner is not required for any consideration either for permanent employment or for the regularization, and therefore, the learned Labour Court

has rightly rejected the Reference of the petitioner workman. She has further submitted that the respondent – establishment has neither committed any type of breach of the any provisions of I.D. Act nor principles of natural justice is violated and therefore, she has submitted that the present petition may be dismissed with appropriate costs.

5.1 I have considered the submissions made by the rival parties. I have perused the record of the petition. I have gone through the impugned judgment and award passed by the Tribunal.

5.2 I found that the learned Labour Court has given detailed reasons while recording findings in the impugned judgment and award passed by the learned Labour Court. It is also pertinent to note that as per letter produced at Exh.20, the petitioner is appointed for one year on fixed salary of Rs.2,800/- per month vide letter dated 01.04.1998, and therefore, such appointment is made for a period of one year and it is a contractual appointment, the signature, which is put on the said document at Exh.20 by the present petitioner, is not disputed by petitioner workman. It is also found from

the record that signature of consent letter at Exh.21 is proved though it is disputed by the petitioner in cross-examination, and therefore, when the petitioner has accepted the terms for the appointment on the contract basis then now, she cannot agitate that the respondent institution had to consider her for continuation in service on the basis of documents which is executed for the purpose of contractual appointment. It is further revealed that the respondent - institution is run by the grant received from the Gujarat Government and as an institute which is following policies of the Gujarat Government and it is also found from the record from the Resolution of the Gujarat Government at Exh.30, by which it clearly establishes that after following necessary procedure and after getting necessary sanction from the Government, the posts of the employees/workmen can be filled up by the institute. It further transpires from the record that there is no advertisement published in the newspaper before the appointment made of the petitioner in the year 1994, and there is appointment order given to the present petitioner in the year 1994 for one year which is coming out from the pleadings and the cross-examination of the present petitioner before the learned Labour Court. It also transpires from the record that as

per the documentary evidence produced by the workman at Exh.36, it clearly indicates the the present petitioner workman was on the basis of fix pay. It also transpires from the record that the learned Labour Court has rightly considered the judgment of the Hon'ble Apex Court in the case of **Uma Devi *(supra)***, whereby the Honb'le Apex Court held that the backdoor entries are not permissible without following due procedure and further held that the temporary employee, who is appointed by the oral order, cannot get the benefit like permanent employees of the establishment. The judgment cited at the Bar by learned advocate Mr. Vasavada for the petitioner in the case of **K.V. Anil Mithra (supra),** which pertains to Section 25 (F) of the I.D. Act and learned advocate Mr. Vasavada has contended that the Honb'le Apex Court has held in abovementioned decision that "Merely because their appointments were not in accordance with the procedure prescribed under the Ordnance would not disentitle the workman from claiming protection under the Act" and therefore, he has submitted that the Hon'ble Apex Court after considering this aspect, has passed the order of reinstatement with 50% backwages and when we peruse the said judgment, it is also relevant to consider various paragraphs of that

judgment, more particular para 28, 29, 30, 32, which is reproduced as under:

> "28. Later, in Punjab Land Development and Reclamation Corporation Ltd., Chandigarh(supra), the Constitution Bench of this Court examined the scope of the term 'Retrenchment" under Section 2(oo) of the Act in affirmative in paragraphs 14 and 82. The relevant paras are as under:-
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> > 14. The precise question to be decided, therefore, is whether on a proper construction of the definition of "retrenchment" in Section 2(oo) of the Act, it means termination by the employer of the service of a workman as surplus labour for any reason whatsoever, or it means 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, and those expressly excluded by the definition. In other words, the question to be decided is whether the word "retrenchment" in the definition has to be understood in its narrow, natural and contextual meaning or in its wider literal meaning.
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> > 82. Applying the above reasonings, principles and precedents, to the definition in Section 2(oo) of the Act, we hold that "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section.
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> 29. It leaves no manner of doubt that the nature of every termination of a kind, by the service of a workman, for any reason whatsoever, which the Legislature in its wisdom made a clarification in its intention to be known to the employer that such of the workman whose services, if to be terminated, will amount to retrenchment under Section 2(oo) of the Act except those expressly excluded in the section.

30. It is not open for us to examine the nature of employment offered to the workman and the manner he had served the employer is beyond the terms of reference made by the appropriate Government dated 8th April, 2003 and the fact is that if the service of the workman has been terminated, it will be termed to be a retrenchment under Section 2(oo) of the Act provided it does not fall under any of those expressly excluded under the section. In every retrenchment, the employer is not under an obligation to comply with the twin conditions referred to under clauses (a) and (b) of Section 25F of the Act but in a case where the workman has been in continuous service for more than 240 days in the preceding 12 months before the alleged date of termination as contemplated under Section 25B, the employer is under an obligation to comply with the twin conditions referred to under clauses (a) and (b) of Section 25F of the Act 1947.

32. What appropriate relief the workman may be entitled for regarding non-compliance of Section 25F of the Act 1947 has been considered by this Court in Bharat Sanchar Nigam Limited Vs. Bhurumal. The relevant paras are as under:-

> "33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious."

5.3 Learned advocate Mr. Vasavada has also relied on the judgment in the case of **Virandra Ramnarayan Shukla (supra)**, in that case it is clearly established that the workman has worked for a period of 240 days in a calendar year and from the depositions of both the sides and from the written statement also, I was inferred in that case that workman has worked for more than 240 days in a calendar year. Moreover, in that case, the workman was working as a Pump Operator with the respondent institute since last 10 years and therefore, the facts of that case is very different from the facts of the present case. I found that in the earlier judgment, in the case of **K.V. Anil Mithra (supra)**, the facts are also different where the services of the petitioners were initially by way of appointment for the period of 1994-95 under the orders of the Vice-Chancellor of the University, and they have given status of regular employees by order date 07.05.1996, they were subsequently deregularized by order dated 24.03.1997, and therefore, the facts of that case is also different from the facts of the present case, in the facts of the present case, it is admitted position that the petitioner herself has signed the consent letter at Exh.21, which is admittedly for the contractual appointment for a period of one year only

and when there is specific agreement between the parties for contractual appointment and when there is specific condition provided in such and the petitioner is appointed for the limited period, then the petitioner cannot claim for any benefit by contending that the respondent establishment of public authority has committed breach of Section 25 (F) or any other provisions of I.D. Act and more particularly, when the is specific condition prescribed in that letter at Exh.20 and also consent given at Exh.21 documents.

5.4 Considering overall facts and circumstances of the present case and after considering the reasons given by the learned Labour Court in the impugned judgment and award, I found that the learned Labour Court has not committed any error in giving the reasons while deciding the Reference and has rightly rejected the Reference of the present petitioner as the petitioner workman is not entitled to get any relief as prayed in the said Reference. I also found that Section 2(oo)(bb) of the I.D. Act is applicable in the facts of the present case and no breach of the provisions of Section 25(F) of the I.D. Act is found in the present case. Moreover, I found that there is no illegality or infirmity committed by the

learned Labour Court while rejecting the said Reference and the learned Labour Court has given proper and sufficient reasons while recording the said reference. In my view, the present case does not warrant any interference to exercise powers under Article 227 of the Constitution of India as no case is made out by the petitioner, and therefore, the present petition is found meritless and deserves to be dismissed.

6. For the reasons recorded above, the following order is passed.

6.1 The present petition is **dismissed**, with no order as to costs.

6.2 The judgment and award dated 01.04.2008 passed by the learned Labour Court, Ahmedabad in Reference (LCK) No.1674 of 1999 is confirmed.

6.3 Rule is discharged.

(SANDEEP N. BHATT,J)

M.H. DAVE