NEUTRAL CITATION
2025:GUJHC:2680

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17361 of 2024

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JAYANTI ISHWARBHAI PARMAR

Versus

SHETH SHRI SABBIR MOHAMMED ZUBAIR

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Appearance:
MR UT MISHRA(3605) for the Petitioner(s) No. 1

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**

Date : 13/01/2025
ORAL ORDER

1. This petition is filed under Articles 226 and 227 of the Constitution of India, challenging the order passed by the learned Presiding Officer, Labour Court, Anand, in Recovery (C) Application No.15 of 2021, dated 05.06.2024 whereby, the application filed by the present petitioner seeking recovery of the amount of Rs.3,03,750/- claiming certain benefits came to be rejected.

2. It is the case of present petitioner that the petitioner was appointed in the establishment of the respondent in the month of February-2002 and service of the petitioner came to be terminated on 01.12.2013. The dispute came to be raised before the learned Labour Court, which was registered as Reference (T) No.90 of 2015. The learned Labour Court after considering the evidence placed passed an award on 11.11.2019, allowing the reference partly and directing the respondent to pay 25% wages from 31.05.2014 till the date of superannuation i.e. 31.05.2016 and also directed to pay the benefit which he was entitled. The petitioner filed recovery application, which came to be rejected and same is subject matter of consideration before this court.

NEUTRAL CITATION
2025:GUJHC:2680

3. Heard learned advocate Mr.U.T. Mishra for the petitioner.

4. Learned advocate Mr.Mishra submits that after the award passed by the learned Labour Court in Reference (T) No.90 of 2015, the payment towards wages was paid Rs.26,520/- along with the cost of Rs.2,500/-. Learned advocate submits that the respondent-authority has not paid the other wages namely salary of 15th August and 26th January, bonus from 2013 onwards, paid holidays wages, rise of Rs.20/- per day from 2010, the amount towards the rent etc. Learned advocate submits that as along with the direction for payment of 25% of the wages, the learned Labour Court has also directed upon the respondent to pay other benefits which he is entitled, the petitioner would be entitled for the above wages and the same was not paid. Learned advocate submits that the learned Labour Court has rejected the recovery application merely on the ground that there is no any pre-existing right therefore, under the provisions of Section 33(C)(2) of the Industrial Disputes Act, 1947 the petitioner cannot claim the above benefits.

5. Learned advocate Mr.Mishra relies on the decision rendered by the Apex Court in the case of **K.S. Ravindran vs. Branch Manager, New India Assurance Company Limited**, reported in **(2015) 7 Supreme Court Cases 222** and submitted that when the termination was held illegal, the petitioner would be entitled for all benefits as if he was never terminated. Learned advocate submits that the claim for minimum wages was also denied by the learned Labour Court, however, as per the decision rendered by the Apex Court in the case of **Sanjit Roy vs. State of Rajasthan,** reported in **1983 SCR (2) 271,** wherein, it was held that payment of anything

NEUTRAL CITATION
2025:GUJHC:2680

less than minimum wages would amount to violation of fundamental rights under Article 223 of the Constitution of India. Learned advocate submits that without following the above settled position of law, the impugned award is passed, therefore the same deserves to be set aside and the petition is required to be allowed.

6. Considering the submissions made by the learned advocate for the petitioner as well as on perusing the reasons assigned by the learned Labour Court, it emerges from the record that petitioner on getting the relief of 25% back wages from 31.05.2014 to 31.05.2016 has claimed following benefits:

Sr.No	Particulars	Amount
1	Salary with 25% from 01.12.2013 to 31.05.2016, 30 months x monthly 4420/-	1,32,600/-
2	Gratuity from Feb-2002 to 31.05.2016 15 years x 15 days x 170/-	38,250/-
3	Holidays from Feb-2002 to 31.05.2016, 15th August and 26th January, 30 x30 x 170/-	5100/-
4	Bonus 8.33 % of the year 2013	4420/-
5	Diwali holidays from Feb-2002 to 01.12.2013, 4 holidays, 48 X170/-	8160/-
6	As per Factory Act Feb-2002 to 31.05.2016 219 x 170 Salary	37,230/-
7	Daily increment of Rs.20 from Feb.2002 to 01.12.2013, monthly Rs.520 x 12	74,880/-
8	Rent of Village – Vishnoli	610/-
9	Expense as per Reference No.90 of 2015	2500/-
	Total	**3,03,750/-**

7. It is undisputed fact that the last drawn of the present petitioner was of Rs.4,420/- and considering the 25% back-wages for two years the amount of Rs.26,520/- along with cost of Rs.2,500/- was paid, in all the petitioner has received an amount of Rs.29,020/- from the respondent through the cheque. The

NEUTRAL CITATION
2025:GUJHC:2680

petitioner has claimed certain benefits including the leave encashment, raise in the salary and minimum wages. It transpires from the record that there is no any award passed by the learned Labour Court directing the respondent to pay above wages, which was claimed.

8. At this stage, it would also be apt to take note of the recent pronouncement of the Apex Court in the case of **Bombay Chemical Industries v. Deputy Labour Commissioner** reported in **(2022) 5 SCC 629**. The relevant paragraphs are quoted as under.

> "As per the settled proposition of law, in an application under Section 33(C)(2) of the Industrial Disputes Act, the Labour Court has no jurisdiction and cannot adjudicate dispute of entitlement or the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based. As held by this Court in the case of Ganesh Razak and Anr. (supra), the labour court's jurisdiction under Section 33(C)(2) of the Industrial Disputes Act is like that of an executing court. As per the settled preposition of law without prior adjudication or recognition of the disputed claim of the workmen, proceedings for computation of the arrears of wages and/or difference of wages claimed by the workmen shall not be maintainable under Section 33(C)(2) of the Industrial Disputes Act. (See Municipal Corporation of Delhi Vs. Ganesh Razak and Anr. (1995) 1 SCC 235)." (Para 8)

> "In the case of Kankuben (supra), it is observed and held that whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33-C (2) of the ID Act. It is further observed that the benefit sought to be enforced under Section 33C (2) of the ID Act is necessarily a preexisting benefit or one flowing from a preexisting right. The difference between a preexisting right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C (2) of the ID Act while the latter does not." (Para 9)

NEUTRAL CITATION
2025:GUJHC:2680

> "Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, when there was no prior adjudication on the issue whether respondent No.2 herein was in employment as a salesman as claimed by respondent No.2 herein and there was a serious dispute raised that respondent No.2 was never in employment as a salesman and the documents relied upon by respondent No.2 were seriously disputed by the appellant and it was the case on behalf of the appellant that those documents are forged and/or false, thereafter the Labour Court ought not to have proceeded further with the application under Section 33(C)(2) of the Industrial Disputes Act. The Labour Court ought to have relegated respondent No.2 to initiate appropriate proceedings by way of reference and get his right crystalized and/or adjudicate upon." (Para 10)

9. As there was no any pre-existing right established by the present petitioner, this Court is of the view that no error has been committed by the learned Labour Court in rejecting the application filed by the present petitioner. The decision which was relied by the learned advocate in the case of **K.S. Ravindran (Supra),** where there was a case, when the learned Labour Court has dismissed the reference seeking reinstatement with full back-wages and the learned Single Judge of the concerned High Court has allowed the reference by granting benefit of 25% back-wages, which was altered by the Division Bench in intra–appeal to stoppage of increment for a period of three years with cumulative effect and the same was under challenge before the Apex Court, wherein the Apex Court has awarded the relief of reinstatement along with 50% back wages. While granting the relief the Apex Court has relied on the judgment in the case of **Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya,** reported in **(2013) 10 SCC 324** and has observed that when the termination was held illegal, the employee would entitled for the back -wages.

NEUTRAL CITATION
2025:GUJHC:2680

10. This Court is of the view that there was no question raised before the Apex Court with regard to jurisdiction under Section 33(C)(2) of the Industrial Disputes Act, 1947, therefore, that judgment would not come to the rescue of the present petitioner. The other decision, which was relied by the learned advocate in the case of **Sanjit Roy (Supra),** wherein the case was with regard to forced labour and in that background the Apex Court has held that payment anything less than minimum wages would amount to violation of fundamental rights. According to the opinion of this Court, in none of the decision, right of the petitioner which can be claimed under Section 33(C)(2) of the Industrial Disputes Act,1947, is discussed.

11. In that view of the matter, this petition being devoid of merits deserves to be rejected and hence it is rejected.

(M. K. THAKKER,J)

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