IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8525 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No

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DAKSHIN GUJARAT VIJ COMPANY LTD.
Versus
RAMANBHAI MATHURBHAI TADVI

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Appearance:
MR DIPAK R DAVE(1232) for the Petitioner(s) No. 1
KRISHNAN M GHAVARIYA(8133) for the Respondent(s) No. 1
MS ASHLESHA M PATEL(6127) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK**

Date : 03/03/2026

JUDGMENT

1. RULE returnable forthwith. Learned counsel Mr. Krishnan Ghavariya, waives service of notice of Rule for and on behalf of the respondent-workman.

2. Present petition is filed by the petitioner - Dakshin Gujarat Vij Company Ltd. under Articles 226 & 227 of the Constitution of India read with the provisions of the Industrial Disputes Act, 1947 (hereinafter be referred to as "*the Act*") challenging the judgment and award dated 01.01.2025 passed by the learned Presiding Officer, Industrial Tribunal, Vadodara (hereinafter be referred to as "*the Tribunal*") in Reference (I.T.) No. 14 of 2023 seeking following reliefs :

"(A) This Hon'ble Court may pleased to issue mandamus and/or nature of a a writ be of writ in the mandamus and/or any other appropriate writ, order or direction to quash and set aside the impugned Reference Order dated 04.02.2023 at Annexure-J to the petition as also the impugned award dated 01.01.2025 passed by learned Industrial Tribunal, Vadodara in Reference (I.T.) No.14 of 2023 at Annexure-A to the petition and further may be pleased to reject the Reference of the respondent in full;

(B) Pending the admission hearing and final disposal of this petition, this Hon'ble Court may be pleased to stay the execution, implementation and operation of the impugned award dated 01.01.2025 passed by learned Industrial Tribunal, Vadodara in Reference (I.T.) No.14 of 2023 at Annexure-A;

(C) Any other and further relief or reliefs to which this Hon'ble Court deemed fit, in the interest of justice; may kindly be granted;"

3. Brief facts giving rise to the present petition are that, the respondent was working as Surveyor in the Ankleshwar Rural Division Office of the petitioner. That, for the serious act of misconduct committed by the respondent, which amounts dishonesty, misappropriation to fraud, and cheating with the petitioner, charge sheet was issued against him on 24.05.2012. That, the respondent attained the age of superannuation on 27.06.2014 and accordingly, as per Service Regulation 72, the respondent was relieved from service. That, the inquiry was conducted after giving full opportunity to the respondent and the inquiry officer submitted his findings. That, second show-cause notice was issued to the respondent and the inquiry report was supplied to the respondent. That, penalty order was issued, whereby the respondent was inflicted penalty of forfeiture of leave encashment and gratuity and therefore, the respondent preferred departmental appeal before the competent authority challenging the said penalty order. After hearing the respondent, the appeal of the respondent was dismissed and therefore, the respondent approached this Court by way of filing Special Civil

Application No.6835 of 2019 against the order of dismissal of the appeal, whereby, this Court dismissed the petition preferred by the respondent vide order dated 03.02.2022. That thereafter, the respondent approached Commissioner of Labour by written application. That, the conciliation officer submitted his failure report and accordingly, the Reference was made to the learned Industrial Tribunal, Vadodara City at Bharuch, whereby, the learned Tribunal without passing Part I award whereby validity of the inquiry was required to be decided, straightway, passed the impugned award dated 01.01.2025, whereby the inquiry against the respondent has been held to be illegal and the petitioner is thus directed to pay leave encashment and gratuity with 68 interest from 01.07.2014.

4. Being aggrieved and dissatisfied with the impugned award dated 01.01.2025 passed by the learned Presiding Officer, Industrial Tribunal, Vadodara in Reference (I.T.) No. 14 of 2023, the petitioner has preferred this petition.

5. Heard Mr. Dipak R. Dave, learned counsel appearing for the petitioner-Company and Mr. Krishnan Ghavariya, learned counsel appearing for the respondent-workman.

6. Learned counsel Mr. Dave has submitted that the impugned judgment and award passed by the Tribunal is illegal, unjust, arbitrary, erroneous and contrary to the facts and evidence on record and the provisions of the Act and therefore, the same is required to be quashed and set aside. He has submitted that the Tribunal has committed a serious error of law and on facts while allowing the reference of the respondent-workman and directing the petitioner to pay leave encashment and gratuity with 6% interest. He has further

submitted that in the earlier round of litigation, the order passed by the petitioner was challenged by the respondent before this Court by way of preferring Special Civil Application No.6835 of 2019 challenging the powers of the petitioner to withhold the amount of leave encashment and gratuity, wherein, this Court after considering the submissions and after hearing all the concerned parties, has dismissed the petition observing that the respondent-workman having alternative efficacious remedy under the provisions of the I.D. Act can challenge the order of withholding. He has submitted that this Court has also observed that under the provisions of the Service Regulation No. 72 of the petitioner-Company, the petitioner has powers to withhold and forfeit the amount of leave encashment and gratuity, however, while dealing with the submissions, the Tribunal has illegally interpreted the order passed by the Co-ordinate Bench as referred in para-7 of the impugned award, the issue no.1 but, the Tribunal has not discussed about the directions and the powers of the petitioner, which are discussed by the Co-ordinate Bench in paras-17 and 18 and therefore, the impugned award passed by the Tribunal is illegal, erroneous and unjust and thereby, the Tribunal has exceeded its jurisdiction which is not vested in it while passing the impugned award. He has further submitted that the Tribunal once came to the conclusion that the inquiry was bad and it was declared illegal, then the course of action should be that the Tribunal ought to have granted permission to the petitioner to lead evidence and prove the charges levelled against the respondent-workman as if, the reference was to be considered under Section 10 of the Act, instead of that, without giving any opportunity and without even considering the settled legal principles enunciated by the Hon'ble Apex Court way back in the year 1965 in case of **Motipur Sugar Factory (Private) Limited vs. Rikhdeo Prasad**, reported in **AIR 1965 SC 1803** and subsequently,

which is reiterated by the Hon'ble Apex Court in a number of decisions in case of **Workmen Of Indian Express Newspaper Private Limited vs. Management Of Indian Express Newspaper Private Limited**, reported in **1969 (1) SCC 228** the Tribunal has passed the impugned award, which is illegal, erroneous and unjust, and under such circumstances, learned counsel Mr. Dave has urged that the present petition be allowed and the matter be remanded back to the concerned authority for deciding the issue afresh.

7. In the order dated 30.06.2025, this Court has recorded that in view of the observations made by the Hon'ble Apex Court in case of **Cooper Engineering Limited vs. Shri P.P. Mundhe**, reported in **AIR 1975 SC 1900**, the preliminary issue has to be decided first with regard to the legality and validity of the inquiry and thereafter, the Tribunal ought to have proceeded further to decide the issue and in view of the same, this Court has issued notice. Today, learned counsel Mr. Ghavariya, appearing for the respondent-workman was unable to give any answer on this legal aspect.

8. I have heard the learned counsel appearing for the respective parties and perused the material placed on record. I have also gone through the impugned judgment and award passed by the Tribunal. The disputed facts involved in the present case is that as to whether the Tribunal was right and justified in passing the final award without giving proper opportunity to the petitioner to lead evidence once the Tribunal has held that the inquiry against the respondent-workman was illegal and null and void and without affording any opportunity to lead evidence, can the Tribunal pass the final award in favour of the respondent-workman or not; whether the impugned award passed by the Tribunal is against the settled legal principles or not; whether the

Tribunal was justified in passing the final award and thereby directing the petitioner thought he subject matter was already decided by the Co-ordinate Bench of this Court or not.

9. It transpires from the record that the respondent-workman was facing serious charges of moral turpitude and for that, inquiry was held by the petitioner under the Service Regulation No.72 of the petitioner-Company and in the proceedings before this Court filed by the respondent-workman being Special Civil Application No. 6835 of 2019, the Co-ordinate Bench of this Court, while dealing with the powers of the petitioner-Company, has observed in paras-17 and 18 thus :

> *"17. As observed hereinabove, the Service Regulation No.72 of the respondent-Company permits the forfeiture of the gratuity and terminal benefits after the retirement. The Supreme Court has held that it is not only for pecuniary loss caused the proceedings can continue after the date of superannuation, but an employee can be proceeded against for a grave misconduct. The Apex Court has expressed disapproval of the interpretation of Section 4(6) of the Act in the manner as contended by the petitioner, which suggests that "in case after superannuation of the employee, there cannot be any dismissal i.e. termination of service as contemplated in Section 4(6) of the Act, and hence, there can be no recovery of pecuniary loss caused by employee or forfeiture of gratuity wholly or partially as that can only to be done in the event of termination of services on charges found established."*
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> *18. Thus, a conjoint reading of the observations made by the Apex Court and Service Regulation No.72 justifies the action of the respondent authorities in forfeiting the amount of leave encashment and gratuity of the petitioner as it empowers the respondent-Company to forfeit the same in case of proved misconduct against the employee, after holding the departmental proceedings. There is no requirement of passing actual order of termination since the Apex Court has observed that such order of termination of service of the employee could not be passed after retirement of the employee. Thus, merely because the petitioner has reached the age of superannuation and no termination order is passed; the same will not dilute the powers of the respondent-Company of forfeiting the amount of gratuity and leave encashment under its Regulation."*

9.1 In view of above, once this Court has held that the petitioner having powers under Service Regulation No.72 of the petitioner-Company to withhold / forfeit the amount of leave encashment and gratuity and that order became final since it was not further challenged by the respondent herein, however, the Tribunal, as if, sitting in appeal over the said judgment, held that the petitioner has no powers to withhold the amount of leave encashment and gratuity as the Tribunal has declared the inquiry legal and *void ab initio* but, at the same time, the Tribunal has failed to consider the ratio laid down by the Hon'ble Apex Court in case of **Cooper Engineering Limited (Supra)**, wherein, the Hon'ble Apex Court has observed that *the preliminary issue challenged to dismissal or re-agitation at the final hearing on merits, absence of inquiry or defective inquiry, once there is a question of violation of the principles of natural justice, Court ought to have decided as a preliminary issue and that preliminary issue is required to be decided first and once that issue is decided and the employer choose not to lead any evidence, the employer would not agitate again* but, herein the present case, without affording that opportunity to lead the evidence, the Tribunal has passed the final order, without following the principles laid down by the Hon'ble Apex Court in paras-21 to 23, which was subsequently followed in case of **Panchmahal Steel Limited vs. Ranjitsinh Udaysing Parmar (Deceased) & Ors.**, reported in **[2024] LawSuit (Guj) 616** the observations made in para-9.

9.2 Subsequently, the Hon'ble Apex Court in case of **Karnataka State Road Transport Corporation vs. Lakshmidev Amma (Smt.) and Another**, reported in **[2001] 5 SCC 433**, more particularly the observations made in paras-8 to 24, 31 and 45. The relevant observations made in para-45 is reproduced hereunder :

> *"45. It is consistently held and accepted that strict rules of evidence are not applicable to the proceedings before labour court / tribunal but essentially the rules of natural justice are to be observed in such proceedings. Labour courts / tribunal have power to call for any evidence at any stage of the proceedings if the facts and circumstances of the case demand the same to meet the ends of justice in a given situation."*

9.3 So far as the direction issued by the Tribunal with regard to release of the amount of leave encashment and gratuity are concerned, that amount is already forfeited by the respondent and that was not challenged further by the respondent and therefore, it is not open for the Tribunal to pass the order with regard to release of the amount towards leave encashment and gratuity. Therefore, in view of above referred decisions and the ratio laid down by the Hon'ble Apex Court, I am of the opinion that the impugned award passed by the Tribunal is required to be quashed and set aside and the matter is required to be remanded back to the Tribunal for fresh consideration, as the petitioner has not give up his right to lead evidence and therefore, without giving an opportunity to the petitioner to lead evidence to prove the correctness and legality of the inquiry, the Tribunal cannot pass the final order as laid down by the Hon'ble Apex Court.

10. In the result, the present petition is partly allowed. The impugned judgment and award dated 01.01.2025 passed by the learned Presiding Officer, Industrial Tribunal, Vadodara in Reference (I.T.) No. 14 of 2023 is hereby quashed and set aside. The matter is remanded back to the Tribunal for deciding the issue afresh, after giving proper opportunity to the petitioner to lead evidence. It is open for the parties to raise all the contentions available in the eye of law and the same shall be decided by the Tribunal in accordance with law,

after affording proper opportunity to all the concerned parties, as expeditiously as possible, preferably within a period of ***six months*** from the date of receipt of writ of this Order. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

Direct service is permitted.

(HEMANT M. PRACHCHHAK,J)

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Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: DOLLYBEN CHETANBHAI VADUKAR(HC01392), PRIVATE SECRETARY, at High Court of Gujarat on 09/03/2026 17:45:25