IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 14761 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

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Approved for Reporting	Yes	No

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GVK EMERGENCY MANAGEMENT AND RESEARCH INSTITUTE
Versus
BHAVSAR KANUBHAI RASIKBHAI

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Appearance:
MR HAMESH C NAIDU(5335) for the Petitioner(s) No. 1
MR ATRAYA K TRIVEDI(11333) for the Respondent(s) No. 1

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

Date : 17/02/2026

ORAL JUDGMENT

1. Present petition is filed by the petitioner 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 01.06.2020 passed by the learned Presiding Officer, Labour Court, Himmatnagar (hereinafter be referred to as "*the Labour Court*") in Reference (L.C.H.) No. 80 of 2013 whereby, the learned Judge has partly allowed the Reference in favour of the respondent-workman directing the petitioner to reinstate the respondent-workman in service with 40% back wages.

1.1 By way of present petition, the petitioner has prayed for the

following reliefs :

> *"A. be pleased to allow this petition;*
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> *B. be pleased to issue a writ of mandamus and/or any other appropriate writ, order or direction in the nature to quash and set aside the impugned order dated 01st June, 2020 passed in Reference (LCH) No. 80/2013 by the Learned Labour court, Himmatnagar;*
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> *C. pending admission, hearing and final disposal of the present petition, Your Lordships be pleased to stay implementation and operation of the impugned order dated 01st June, 2020 passed in Reference (LCH) No. 80/2013 by the Learned Labour court, Himmatnagar;*
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> *D. such other and further orders as in the nature of circumstances of the case may be passed."*

2. Brief facts giving rise to the present petition are that, the petitioner operates 24X7 108 emergency response service in the State of Gujarat since 29th August, 2007 in partnership with the Government of Gujarat and the services rendered by the petitioner was to provide ambulance and primary medical aid free of cost to all users. That, the petitioner is nationally headed by a Chief Executive Officer with a Board of its own, headed by the Chairman. That, the petitioner has arrived at a public-private partnership with the Government for providing said services and it enjoys operational freedom and autonomy and similar kind of services are provided by the petitioner in various States of the Country. That, the petitioner is working without anticipating any profit as it does not charge any money for the services being provided by it.

2.1 It is the case of the petitioner that, the respondent was working as Driver (Pilot) with the petitioner and was confirmed in services on 20.10.2009. That, as per the rules of the petitioner, the services of its

employees are transferrable and accordingly, the services of the respondent were transferred from time to time. That, the services of the respondent were transferred on five different occasions before transferring him to Olpad, Surat vide order dated 06.06.2013. That, the respondent did not resume his duties at Olpad, Surat and had come to the office of the petitioner on 21.06.2013 to submit his representation. That, on the said day, the respondent had misbehaved, used abusive language and also threatened the officer of the petitioner and for the said misconducts, the respondent was issued showcause notice dated 26.06.2013. That, subsequent to the showcause notice issued, inquiry was undertaken against the respondent as per the principles of natural justice and the respondent had remained present in the inquiry proceedings along with his Advocate concern. Further the witness of the petitioner was also cross examined in the inquiry proceedings. That, in the inquiry the misconduct as alleged were proved and hence, the respondent was issued second show cause notice dated 14.08.2013. Subsequently, thereafter, vide order dated 03.09.2013 the services of the respondent were terminated.

2.2 It is the case of the petitioner that the termination order was assailed before the Labour Court, Himmatnagar, by the respondent by preferring reference being Reference (LCH) No. 80 of 2013. That, during the proceedings before the Labour Court, the Labour Court vide order dated 14.12.2018 had upheld the inquiry. That, evidence of the respondent was led at exhibit 24 and the petitioner had also led evidence before the Labour Court and even cross examination was undertaken. That, the Labour Court wholly on untenable grounds and without properly appreciating the legal proposition of law, reappreciated the evidence, which is not permissible under Section

11A of the Industrial Disputes Act, 1947, once the inquiry is upheld, and passed the impugned judgment and award dated 1st June, 2020.

3. Being aggrieved and dissatisfied with the impugned award dated 01.06.2020 passed by the learned Presiding Officer, Labour Court, Himmatnagar in Reference (L.C.H.) No. 80 of 2013, the petitioner has preferred this petition.

4. Heard Mr. Hamesh C. Naidu, learned counsel appearing for the petitioner - Institute and Mr. Atraya K. Trivedi, learned counsel appearing for the respondent - workman.

5. Learned counsel Mr. Naidu has submitted that the impugned judgment and award passed by the Labour Court is illegal, unjust, arbitrary, erroneous and contrary to the facts and material 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 Labour Court has not appreciated the fact that the respondent-workman had committed an offence of using abusive language and threatening of assault to the superior, for which, departmental proceedings were initiated against the respondent-workman and chargesheet was also issued. He has submitted that during the proceedings before the Labour Court, the Labour Court vide order dated 14.12.2018 had upheld the inquiry and the inquiry proceedings was held legal and valid. He has submitted that on one hand, the Labour Court has held the inquiry legal and valid and on the other hand, the Labour Court has passed the impugned award of reinstatement with 40% back wages, which is illegal, erroneous and unjust and thus, the Labour Court has completely ignored and overlooked the fact that the conduct of the respondent-workman was not in the interest of the petitioner-institute

/ establishment as it was providing emergency services. He has further submitted that the respondent-workman was serving as a driver of the ambulance vehicle run by the petitioner, which was an essential service and therefore, such kind of misconduct cannot be tolerate and therefore, the petitioner had initiated inquiry as the respondent-workman was not responding to his duty and did not join the duty at the transferred place and on the contrary, the respondent-workman had used abusive language against the superior officer and had also given threat of assault and thus, the impugned award passed by the Labour Court is illegal, erroneous and unjust. Over and above the grounds agitated in the memo of petition, learned counsel Mr. Naidu has urged that the impugned award is required to be quashed and set aside and the present petition is required to be allowed.

6.1 In support of his submissions, learned counsel Mr. Naidu has referred and relied upon the following decisions :

[I] U P S R T C vs. Vinod Kumar, [2008] 1 SCC 115, relevant paras-7, 8, 10;

[II] General Secretary, South Indian Cashew Factories Workers Union vs. Managing Director, Kerala State Cashew Development Corporation Ltd., [2006] 5 SCC 201, relevant para-7;

[III] Divisional Controller vs. Industrial Tribunal & Ors., Special Civil Application No.71 of 2015, relevant paras-18, 19;

[IV] Mahindra and Mahindra Limited vs. N.B. Naravade, [2005] AIR SCW 1115, relevant paras-10, 14, 17, 18, 19, 20;

[V] L.K. Verma vs. H M T Ltd., [2006] 2 SC 99, relevant paras-16, 23;

[VI] Management of Sundaram Industries Limited vs. Presiding Officer, Labour Court and Another, High Court of Madras, W.P. No. 3551 of 2000, relevant paras-17, 19;

[VII] Divisional Controller vs. Industrial Tribunal & Anr., Special Civil

Application No. 20 of 2015.

7. Per contra, learned counsel Mr. Trivedi, appearing for the respondent-workman, has opposed the present petition and submitted that the respondent-workman had remained present before the management to join the duty but, he was not allowed to join the duty. He has submitted that there was no evidence led by the petitioner before the Labour Court to prove the charges levelled against the respondent-workman. Learned counsel Mr. Trivedi has emphasized upon the observations made by the Labour Court in para-13(d) of the impugned award, whereby, the Labour Court has considered that the concerned officer who was alleged to have been abused by the respondent-workman, has not proved the offence by leading cogent and material evidence and therefore, the order of termination was held illegal and the respondent-workman was ordered to be reinstated in service, which is in consonance with the settled principles of law and therefore, under such circumstances, this Court may not interfere in the findings recorded by the Labour Court. Learned counsel Mr. Trivedi has submitted that the respondent-workman has also filed further affidavit seeking compliance of Section 17B of the Act and urged that the respondent-workman be allowed to join the duty and the impugned award passed by the Labour Court be implemented in its true spirit. Learned counsel Mr. Trivedi has therefore, submitted that the present petition be dismissed.

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 award passed by the Labour Court. The issue involved in the present petition is that as to whether the impugned award passed by the Labour Court is justified and is tenable in the eye

of law, since the observation made by the Labour Court while allowing the application preferred by the petitioner at Exh.-20, where the very Presiding Officer of the Labour Court has held the inquiry proceedings legal and valid vide order dated 14.12.2018 and observed in para-11(a)(b) and (c) as under :

(a) Upon perusing the records of this case, the Second Party was serving as a Pilot (Driver) in the First Party-Organization based on an appointment letter dated 07/05/2008 and a permanent employment letter dated 29/10/2009. He was transferred from Sabarkantha district to the Olpad location in Surat district vide letter dated 6/6/2013, the individual failed to report for duty at the new location from 15/06/2013 till the show-cause notice was issued on 26/06/2013 and to avoid reporting to the transfer location, the individual sought to defy the transfer order by various means and went to submit a letter to his superior officer in Sabarkantha district, Mr. Sandip Gadhvi. At that time, he used abusive and insulting language toward Mr. Gadhvi, cursed the management, and threatened to kill Mr. Gadhvi, and by doing so he has committed a serious type of misconduct. A show-cause notice was issued on 26/06/2013 regarding this matter. The Second Party submitted a written response to the notice dated 26/6/2013 via a letter dated 03/07/2013. Subsequently, a departmental inquiry against the Second Party has been scheduled on 23/07/2013 at 12:30 hours in Naroda and Mr R. B. Joshi has been appointed as investigating officer and the same was communicated to the second party via a registered AD letter dated 15/07/2013.

Upon perusing the record, as the Investigating Officer was not present on 23/07/2013, the investigation was postponed to 29/07/2013. The second party addressed a letter dated 23/07/2013 to the first party regarding this matter. This letter has been produced vide Exhibit No. 12 within the documents submitted vide Mark 11/4 in this case.

On 29/07/2013, the Investigating Officer, the Presenting Officer, the second party, and his defense representative, Mr. Mahendrabhai Motibhai Pandya, remained present for the investigation. Permission was granted to the second party to engage Mr. M.M. Pandya as his defense representative. Upon reading out the notice dated 26/06/2013 and on asking whether he admits the allegation or not?, the second party stated that he had submitted a reply to the show-cause notice to the organization on 03/07/2013 and he further submitted that after three years of marriage, his wife was pregnant after extensive treatment and required care, therefore, as per medical advice, he was unable to report for duty upon inter-district transfer. Following this statement, further investigation was carried out. The Presenting Officer of the organization, Mr. Vimal Meghani, produced documents vide Mark 1 to 14 during the proceedings. The second party was directed to obtain copies of all such documents. As he informed that he has all the copies with him, the organization was directed to produce witnesses.

As the Presenting Officer-Mr. Vimal Meghani, on behalf of the organization, has requested to produce witnesses on the next date of hearing, the investigation was scheduled on 02/08/2013 at 12:30 hours and all the present parties signed in the minutes of the investigation proceedings, and a copy of the same was furnished to the second party.

All parties remained present for the investigation on 02/08/2013 and the Presenting Officer, Mr. Vimal Meghani, produced Mr. Sandip Gadhvi as a witness on behalf of the first party-the organization. Upon being directed to record his statement, Mr. Sandip Gadhvi dictated his statement. The learned defense representative for the second party, Mr. M.M. Pandya, cross-examined the said witness. Subsequently, the second party also cross-examined the same witness and after the conclusion of questioning of the second party, Mr. Meghani conducted a re-examination. Thereafter, the cross-examination of the witness was declared as over. On being directed to produce further witnesses, Mr. Meghani stated that he did not wish to produce any further witness or evidence. Consequently, the evidence of the organization was declared as over and the second party was directed to produce his evidence. The second party recorded his statement on the same day, which was cross-examined by Mr. Vimal Meghani on behalf of the first party. Thereafter, as the second party declined to produce any further evidence, his evidence was declared as over and the investigation proceedings were declared as concluded and copies of the investigation proceedings were furnished to the second party.

Based on the said investigation proceedings, the Investigating Officer submitted the findings of the inquiry on 07/08/2013, along with which a second show-cause notice dated 14/08/2013 was dispatched to the second party via registered AD. The second party submitted a reply to the same vide letter dated 18/08/2013. After that, it appears that the second party was dismissed from service vide order dated 03/09/2013.

(b) The second party was dismissed following a departmental inquiry, the legality of which has been challenged by the second party. Therefore, it remains to be determined whether the investigation proceedings were conducted in accordance with the principles of natural justice or not? At this stage, it only remains to be determined that whether any breach of the principles of natural justice was committed by the Investigating Officer during the course of the investigation or not? The perversity of the investigation findings is not required to be determined at the stage of deciding the legality of the investigation proceedings and if the investigation proceedings are held to be in violation of the principles of natural justice, the findings based on such proceedings shall automatically stand void and if the investigation proceedings are found to be in accordance with the principles of natural justice, the second party may subsequently make submissions regarding the perversity of the findings and the punishment imposed for the proved misconduct.

Upon perusing the record of the investigation proceedings in this case, it is stated in the show-cause notice issued to the second party that he did not report to the place of transfer from 15/06/2013 to 26/06/2013

and he has thereby disrespected a lawful order. Furthermore, such facts are clearly stated that on 21/06/2013, in an attempt to avoid reporting for duty at the place of transfer, when the second party went to serve a letter defying the transfer order to his superior officer, Mr. Sandip Gadhvi, he used abusive and insulting language with Mr. Gadhvi, hurled abuses at the management, and issued life threats to Mr. Sandip Gadhvi. The second party has submitted a reply to this notice. Upon receipt of reply of second party, he was informed that it was decided to initiate investigation proceedings against him and an investigating officer has been appointed and accordingly, the first party communicated the date, venue, and time of the investigation, as well as the name of the Investigating Officer. As the Investigating Officer did no remain present on the first scheduled date of the investigation, it was rescheduled on 29/07/2013, the show-cause notice was read out to the second party on the said date and he was inquired as to whether the charges were admitted by him or not ? As the second party did not admit the charges, the investigation was proceeded further. During the proceedings on that day, the institution produced documents including the show-cause notice, the acknowledgment slip thereof, a copy of the appointment letter of the Investigating Officer, a copy of the appointment letter of the Presenting Officer, a copy of the transfer order issued to the second party along with the receipt of service of the order, the reply submitted by the second party, correspondence addressed by the second party to the first party, reply of the show-cause notice submitted by the second party and letters dated 21/06/2013 and 03/07/2013 submitted by the second party regarding the stay of his transfer. Copies of which were received by the second party. Copy of the investigation proceedings have been furnished to second party. On the third date of the investigation, 02/08/2013, the deposition of the witness of the organisation, Mr. Sandip Gadhvi, was recorded in the presence of the second party. The cross-examination of this witness was carried out by the learned defense representative for the second party, advocate Mr. M.M. Pandya, as well as by the second party himself. Upon concluding the cross-examination, as the first party stated that they did not intend to produce further witnesses, the stage of their evidence was declared over, and the second party was directed to produce his evidence. Subsequently, the second party recorded his statement, and his cross-examination was conducted on behalf of the first party. As the second party stated that he did not wish to produce further evidence, the investigation was declared as over.

Thus, upon considering the record of inquiry proceedings, the opportunity was provided to the second party to file reply to the show cause notice. The witnesses of the organization were examined in the presence of the second party. Opportunity to cross-examine the said witnesses was also provided. The second party has received copies of the documents produced on behalf of the organization. The second party has been permitted to engage an advocate as a representative for his defence. An opportunity has been given to the second party to produce his evidence and statement. Further, second party was provided with the copy of the inquiry findings along with the second show-cause notice. Second party has submitted a reply to it. Thereafter, an order was passed for his dismissal from the service. Thus, at every stage of the inquiry, second party has been

provided reasonable opportunity for his defence. Considering the record of the inquiry proceeding, the second party has not raised any objection at any point during the proceedings of the inquiry. Upon considering the cross-examination arising from the approval application of the deposition on affidavit vide Exhibit-14, which has been accepted by the parties as cross-examination in this matter, it shows that the second party has admitted all the aforementioned facts in the cross-examination. Even after being provided with the copy of the proceeding of the inquiry, second party has not raised any objection against the legality of the inquiry at the respective time. Therefore, as the the inquiry proceedings conducted are as per the principles of natural justice, Issue No. 1 is decided in 'Negative.'

(c) In this matter, Ld. Advocate for the Second Party Mr. J.S. Patel, has argued that, though there is no provision of transfer in the appointment letter issued to the second party, the second party was transferred from Sabarkantha to Olpad location of Surat district with a malafide intention that he would leave the job on his own. The said step taken by the organization is of the nature of victimization and a type of unfair labour practice and despite there being no provision of transfer in the appointment letter, he was transferred and charge sheet was issued whom the second party did not resume his duty at the place of transfer. As the said charge sheet was issued wrongfully, the inquiry conducted in pursuance of the said charge sheet should be declared null and void. The argument raised by him is not maintainable at this stage. Whether the first party has brought to end the service of the second party on the pretext of his transfer or not is to be decided at the stage of passing the final order. At this stage, what is to be considered is the fact whether an opportunity for defence was provided to the second party during the inquiry proceedings conducted against him or not. Issues like whether the findings reached at the end of the inquiry are perverse or not, whether the penalty awarded for the misconduct proved during the inquiry is shockingly disproportionate or not are to be decided at the stage of passing the final order. Ld. Advocate for the second party, Mr. Patel has argued that despite no complaint was produced during the inquiry proceedings which had been filed by Mr. Sandip Gadhavi against the second party, allegation regarding misconduct using insulting language has been levelled by the organization in the suo moto show-cause notice. Despite the said allegation is fabricated, the Inquiry Officer has considered it proved. Therefore, he has stated that the said inquiry should be declared void. Further, during the inquiry, no representation has been made regarding the absence of the second party and no evidence regarding the absence has been produced by the Officer of the place of transfer. Therefore, it has been submitted that allegation of absence is not proved. As stated above, both the said submissions are to be considered at the time of determining the perversity of the findings.

8.1 Before going to the facts of the case, the charges levelled against the respondent-workman is required to be looked into, which is reproduced hereunder :

(1) This is to inform you that you were transferred to the location of the organization at Olpad, District- Surat on 06/06/2013. You had already received the said transfer order. Despite this, you have not resumed your duty at the location of your posting till date. Despite being explained orally by the officers of the organization in this regard, you have not reported to duty from 15/06/2013 till date, which has caused difficulties in providing emergency services at the Olpad location.

(2) Furthermore, as a part of avoiding reporting to your transferred location, you went to submit a letter dated 21/06/2013 to the superior officer of Sabarkantha, Mr. Sandip Gadhvi, which in one way or another defied the transfer order. At that time, during the course of his duty, you used abusive and insulting language towards Mr. Sandip Gadhvi, the superior officer and management authority of the organization, and you also threatened Mr. Sandip Gadhvi to kill him by stating that, 'I can hit you from behind when you are going on a bike.' Thus you have committed a grave misconduct.

(3) This is to inform you that you have deliberately disobeyed the lawful and reasonable order issued by the superior officer of the organization. This constitutes a serious offence.

The acts mentioned above constitute a serious misconduct as per the service rules applicable to the organization. Therefore, you are informed to submit a written reply to the undersigned within 7 days of receiving this notice as to why legal action should not be taken against you in this regard. If you fail to do so, it will be presumed that you do not want to say anything in this regard and further proceedings will be initiated accordingly.

8.2 Against the aforesaid charges levelled against the respondent-workman, the petitioner initiated departmental proceedings for the alleged misconduct and ultimately, the charges being proved, the petitioner passed the order of termination. The respondent-workman has challenged the legality and validity of the inquiry proceedings before the Labour Court by way of preferring application below Exh.-20 and after considering the facts and after considering the relevant documents, the Labour Court has held the inquiry proceedings legal and valid vide order dated 14.12.2018 as above. It is pertinent to note

herein that, on one hand, when the Labour Court has held the inquiry legal and valid and no violation of principles of natural justice is found, on the other hand, the Labour Court is not justified in passing the order of reinstatement alongwith other consequential reliefs and therefore, considering the decision of the Hon'ble Apex Court in case of **UPSRTC vs. Vinod Kumar**, more particularly the observations made in paras-7, 8 and 10, wherein, the Hon'ble Apex Court has held that when the legality or validity of the inquiry conducted is not in dispute and only the quantum of punishment is challenged before the Labour Court, then the power Labour Court while exercising jurisdiction under Section 11A of the Act is very limited as the Labour Court is not sitting in appeal over the decision taken by the disciplinary authority and now, it is well settled in series of judgment of the Hon'ble Apex Court as well as this Court, the Hon'ble Apex Court has reaffirmed the view taken in earlier decisions. Therefore, under such circumstances, I am of the opinion that the Labour Court has exceeded its jurisdiction while exercising its powers under Section 11A of the Act while coming to the conclusion that the inquiry proceedings is legal and valid, which was not under challenge, then the only question remains is qua quantum of punishment and now it is well settled in series of judgments as aforestated that the interference of the Labour Court while exercising jurisdiction under Section 11A of the Act is very limited and herein the present case, it appears that the Labour Court without considering this aspect has interfered with the order of quantum of punishment, which is completely illegal, erroneous and unjust in view of the settled principles of law and therefore, the impugned award passed by the Labour Court is required to be quashed and set aside.

9. In the result, the present petition is hereby ***allowed***. The

impugned judgment and award dated 01.06.2020 passed by the learned Presiding Officer, Labour Court, Himmatnagar in Reference (L.C.H.) No. 80 of 2013 is quashed and set aside. Rule is made absolute.

(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 19/02/2026 15:31:23