

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****LETTERS PATENT APPEAL NO. 717 of 2014****In SPECIAL CIVIL APPLICATION NO. 9135 of 2013****With****LETTERS PATENT APPEAL NO. 722 of 2014****In****SPECIAL CIVIL APPLICATION NO. 9136 of 2013****With****LETTERS PATENT APPEAL NO. 723 of 2014****In****SPECIAL CIVIL APPLICATION NO. 9138 of 2013****With****LETTERS PATENT APPEAL NO. 724 of 2014****In****SPECIAL CIVIL APPLICATION NO. 9139 of 2013****With****LETTERS PATENT APPEAL NO. 725 of 2014****In****SPECIAL CIVIL APPLICATION NO. 9140 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE A.G.URAIZEE**

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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, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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AMRITLAL HARJI CHAUHAN....Appellant(s)  
Versus  
BANTVA MUNICIPALITY & 1....Respondent(s)

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Appearance:

MR VIRAT G POPAT, ADVOCATE for the Appellant(s) No. 1  
MS PANNA I BHALLA, ADVOCATE for the Appellant(s) No. 1  
MR DEEPAK P SANCHELA, ADVOCATE for the Respondent(s) No. 1  
MR PARITOSH CALLA, ADVOCATE for the Respondent(s) No. 2

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**  
and  
**HONOURABLE MR.JUSTICE A.G.URAIZEE**

**Date : 10/02/2015**

**ORAL JUDGMENT**  
**(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1. We have heard learned advocates for both the sides.
2. These intra-court Letters Patent Appeals have been filed challenging the judgement and orders passed by the learned Single Judge in the captioned writ petitions whereby the learned Single Judge has partly allowed the writ petition and directed the present respondent to pay the present appellant – workman compensation in lieu of reinstatement.
3. It is the case of the appellants that they were appointed

by respondent no. 1 – Municipality and thereafter their services were terminated. Being aggrieved by the same, the respondents filed a reference before the Labour Court. The Labour Court granted reinstatement without backwages to the appellants. The respondent Municipality therefore preferred writ petition before the learned Single Judge of this Court and the learned Single Judge after hearing the parties passed the aforesaid orders.

4. Mr. Virat Popat, learned advocate appearing for the appellants submitted that the learned Single Judge erred in granting compensation in lieu of reinstatement when there was clear violation of provisions of Section 25 of the Act. He submitted that the reinstatement was not with back wages and therefore it would not have amounted to burdening the Municipality.

5. The learned Single Judge by way of the impugned orders has observed as under:

“8. The tracing of above position of law makes it trite that relief of reinstatement for the dailyrated workman may not invariably follow the finding of breach of Section 25-F. Granting of reinstatement is not indispensable in all cases of illegal retrenchment of daily-wager. Reinstatement is not to be granted merely because it is otherwise lawful. Justice could be accorded by awarding compensation. 8.1 The considerations, factors, aspects and principles emanating from the above discussion, which may weigh and guide the discretion for awarding lumpsum compensation in lieu of reinstatement, may be outlined, without being exhaustive, as under:

- (i) The fact that the workman is daily-rated workmen, not permanently employed;
- (ii) He is not holding a permanent post;
- (iii) Nature of his employment;
- (iv) Span of service, viz. The period during which he worked upto the date of termination of services;
- (v) Manner and method of appointment. Whether it was a backdoor entry;
- (vi) The time gap from the date of termination;
- (vii) Delay in raising the Reference is also considered to be a germane factor;
- (viii) Any special feature peculiar to the facts of the particular case. For instance, in Bhurumal (supra), the Supreme Court noticed that post which the workman held was of Lineman in the Telephone Department, and that the work of Lineman was drastically reduced in view of advancement of the technology.

9. Reverting to the facts of the present case, informed by the above principles, workman was Safai Kamdar claiming to be getting monthly pay of Rs.01,500/-. Termination of his service occurred in the year 2004. Long 10 years have intervened. In the facts and circumstances, therefore, it would be proper if instead of relief of reinstatement, he is awarded lumpsum amount of Rs.50,000/- (Rupees Fifty Thousand Only) by way of compensation."

6. The Apex Court as well as this Court have been consistent in taking a view that when it comes to the case of termination of a daily wager and where the termination is found to be illegal because of procedural defect, namely in violation of Section 25-F of the Industrial Disputes Act, reinstatement with back wages is not automatic and instead the workman may be given monetary compensation. We are in complete agreement with the reasoning adopted and findings arrived at by the learned Single Judge so far as compensation in lieu of reinstatement is concerned. However,

we feel that the amount of compensation awarded to each workman is on the lower side. Ends of justice will be met if the respondent is directed to pay the appellants compensation to the tune of their last drawn salary for 39 months.

7. In the premises aforesaid, appeals are partly allowed. We do not disturb the direction of the learned Single Judge to award compensation in lieu of reinstatement. However, we increase the amount of compensation which shall be 39 months' last drawn salary (last drawn salary x 39 months). The amount of compensation shall be paid within a period of one month from today. No costs.

**(K.S.JHAVERI, J.)**

**(A.G.URAIZEE,J)**

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