

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13488 OF 2018

Shantilal S. Gudkha,

House No.1236, New Tawre Compound,

Near Office of Bhagwan Tawre,

Balaji Nagar, Narpoli,

Bhiwandi, District Thane

... Petitioner

V/s.

ATUL
GANESH
KULKARNI

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ATUL GANESH
KULKARNI
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Ajmal Salamat Shaikh,

House No.844, Ansari Nagar,

Shanti Nagar Road, Behind Apna

Hospital, Bhiwandi, Dist. Thane.

... Respondent

Dr. D.S. Hatle with Mr. Deepak P. Jamsandekar for the
petitioner.

Mr. Mayuresh D. Modgi for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : NOVEMBER 07, 2025

PRONOUNCED ON : NOVEMBER 14, 2025

JUDGMENT:

1. This petition is filed under Article 227. The petitioner challenges the Award dated 25 May 2018 passed by the Labour Court at Thane in Reference (IDA) No. 12 of 2011.

2. The facts leading to the present petition are simple. The respondent raised an industrial dispute under Section 10(1) of the

Industrial Disputes Act before the Conciliation Officer at Thane. He stated that he was working with the petitioner as a Jobber from 1 April 1998 and was drawing monthly wages of Rs. 6,500. According to him, the petitioner terminated his services with effect from 1 June 2009. He stated that the petitioner appeared before the Conciliation Officer on 2 March 2010 and paid him Rs. 3,500 towards alleged balance wages, and then left the conciliation office. Before raising the dispute, the respondent sent a demand notice dated 26 March 2010. The Conciliation Officer conducted conciliation and prepared a failure report.

3. After the failure report, the Government referred the dispute to the Labour Court at Thane for adjudication. It was registered as Reference (IDA) No. 12 of 2011. The respondent filed his claim stating that he was working as Jobber since 1 April 1998. He claimed that he was working for twelve hours a day and earning Rs. 6,500 per month. He stated that the petitioner and one Pravin Gudkha were running power loom business at the address mentioned in the cause title and had engaged 15 to 16 workmen daily. He also stated that the petitioner was not giving any documentary proof of the services of the workers engaged.

4. The petitioner filed written statement. He denied that the respondent was his employee. He stated that the respondent was working on commission. According to him, the respondent was paid Rs. 0.40 per meter for weaving cloth. The commission depended on the meters processed, and was not a fixed amount. He stated that the respondent worked only from 1 February 2009 to 30 May 2009. He was paid commission every fifteen days. The

petitioner stated that the respondent left the work on his own from 1 June 2009 as he got better commission elsewhere. He further stated that the respondent did not collect his commission for the period from 16 May 2009 to 30 May 2009 despite reminders. He stated that there was no relationship of employer and employee, and therefore the dispute was not maintainable.

5. During the pendency of the Reference, the respondent filed an application seeking production of muster register and wage register from 1 January 2003 to 1 June 2009. The petitioner filed reply on 3 May 2013 opposing the application. He again denied the existence of employer-employee relationship. He also stated that he had not maintained such registers, which according to him was clear from the Labour Court report. He prayed for rejection of the application.

6. The Labour Court allowed the application and directed the petitioner to produce the documents. The petitioner did not produce the documents as directed.

7. The petitioner later filed an application bringing on record certain cash vouchers from 25 February 2009 to 10 May 2009. These vouchers indicated payment of commission to the respondent. After considering the material placed by both sides, the Labour Court directed the petitioner to reinstate the respondent with full back wages from 1 June 2009. The petitioner has challenged this order in the present petition.

8. Learned counsel for the petitioner submitted that the respondent did not prove employer-employee relationship. He

argued that the respondent did not discharge the initial burden of proving that he was in employment of the petitioner from 1 April 1998 as Jobber. He stated that the petitioner had clearly pointed out before the Labour Court that the respondent was engaged only from 1 February 2009 to 30 May 2009 on commission basis at the rate of Rs. 0.40 per meter, and that vouchers for this period were produced. He argued that the respondent did not produce any document to prove existence of employer-employee relationship. He submitted that the Labour Court erred in allowing the application for production of documents when the petitioner had stated that he had not maintained such registers, which is also clear from the Factory Inspector's report.

9. He placed reliance on the judgment of the Supreme Court in *R. M. Yellatti versus Assistant Executive Engineer*. He submitted that only after the employee produces oral and documentary evidence in support of his case, the Court can grant reinstatement. He submitted that drawing adverse inference depends on the facts of the case. He submitted that in the present case the Award is unsustainable and deserves to be set aside.

10. On the other hand, learned counsel for the respondent submitted that the respondent discharged the burden by filing his affidavit in lieu of examination-in-chief. He submitted that the petitioner refused to produce muster register and other records which he is legally bound to maintain. He submitted that the Labour Court had directed production of attendance register for the period 1 January 2003 to 1 June 2009. The petitioner deliberately avoided producing these documents to deny relief to

the respondent. He submitted that the respondent had no access to these documents as they were in the custody of the petitioner. He submitted that the judgment in R. M. Yellatti does not help the petitioner, because in that case the workman was a daily wager and had not produced any evidence. In the present case, the respondent has stated his case on oath and the petitioner has withheld important documents.

11. He referred to the vouchers produced by the petitioner and submitted that these vouchers only show payment but do not show the purpose of payment. He pointed out that the respondent has stated in his examination-in-chief that the petitioner maintained muster register, but no worker was ever given a copy. He submitted that the Labour Court has rightly granted reinstatement with full back wages. He prayed for dismissal of the petition.

12. I have considered the pleadings, the evidence placed on record and the rival submissions. The central issue is simple. The respondent asserts that he was a workman. The petitioner denies this and claims that the respondent was only a commission agent. In such a situation, the Labour Court has to see who has placed before it the material which the law expects from him. The law requires the employee to first state necessary facts under oath. Once this is done, the employer must place before the Court the records which he is required to maintain under law.

13. The respondent has stepped into the witness box and has taken oath of truth. He has given a clear and consistent account. He stated that he worked with the petitioner for several years and

that he was paid monthly wages. He further stated that the petitioner maintained a muster register and a wage register. According to him, these registers were regularly filled and used in the ordinary course of business. However, no employee was ever given a copy of any such record.

14. These statements are not casual assertions. They are matters within his personal knowledge. They relate to the daily working of the establishment. A workman who attends the workplace day after day would naturally know who maintains attendance records, how wages are distributed and whether written records are kept. In cross examination, the petitioner had full opportunity to discredit this evidence. The petitioner did not put forth any material contradiction. The respondent's testimony remained unshaken.

15. When a witness gives a version based on his direct experience and this version stands firm after cross examination, the Court must attach due weight to such testimony. The law does not demand mathematical precision from a workman. It expects him to state the facts which lie within his knowledge. Once he does so, the burden shifts. At that stage, the employer, who has possession of statutory registers, must place them before the Court. If he fails to do so, the consequence flows from well-settled principles, depending on the facts of the case.

16. The petitioner was called upon to produce muster register and wage register from 1 January 2003 to 1 June 2009. These are statutory records. If the petitioner had maintained them, they

would have given a clear answer to the issue. The petitioner chose not to produce them. He only stated that such registers were not maintained. This stand cannot be accepted. A person running a power loom with 15 to 16 workers each day is expected to maintain basic records. Failure to produce such records, though directed by the Labour Court, gives rise to an adverse inference. The Court must then hold that the records, if produced, would have supported the case of the respondent.

17. The petitioner produced some cash vouchers to show payment of commission from February 2009 to May 2009. These vouchers do not mention that the amount was commission. They only show payment. The period shown in these vouchers is also limited. The petitioner has not given any explanation why no earlier record exists if the respondent was engaged only from February 2009.

18. Therefore, the respondent's sworn statement, supported by the absence of contrary material from the petitioner, forms a strong foundation for drawing the necessary inference that the respondent was indeed working as a regular workman for a considerable period. The credibility of his testimony stands reinforced by the petitioner's silence on essential records which, if produced, would have given a complete picture.

19. The judgment in *R.M. Yellatti* was examined with care. The principle emerging from that decision is clear. A workman must first place before the Court the basic facts within his personal knowledge. Only when he fails to do so can the Court hold that he

has not discharged his initial burden. In that case, the employee had not produced any oral or documentary material. The Court therefore found that no foundation was laid for drawing any inference in his favour.

20. The present case stands on a different footing. The respondent entered the witness box. He gave sworn testimony. He narrated the period of his employment, the nature of his work, the wages paid to him and the maintenance of muster and wage registers by the petitioner. These are relevant and material facts. They constitute the very foundation on which the Court can examine the existence of an employment relationship. His version has remained steady. It has not been shaken in cross examination.

21. On the other hand, the petitioner is the person who is expected by law to maintain statutory records. These records are not ornamental. The petitioner had special knowledge of these documents. He also had exclusive custody of them. When the Labour Court directed him to produce the muster and wage registers for a specific period, he refused. He merely stated that such records were not maintained. This stand is difficult to accept from an employer running a power loom with several workers.

22. In such circumstances, the law permits and expects the Court to draw an adverse inference, depending on facts of the case. The principle is settled. When a party, who alone possesses material evidence, refuses to produce it despite direction, the Court may presume that the evidence, if produced, would have gone against him, depending on the facts the case. The Labour Court applied this

rule correctly. The inference drawn was not speculative. It was a logical consequence of the petitioner's deliberate failure to place on record documents which were necessary for a fair adjudication.

23. Therefore, the finding of the Labour Court that the respondent was a workman and that his services were terminated is supported by the correct application of legal principles and by the conduct of the petitioner himself.

24. The Labour Court has appreciated the evidence in a proper manner. It found that the respondent was a workman and that his services were terminated from 1 June 2009. There is no material to show that this termination was for any misconduct or for any bona fide reason. The respondent was not given notice, nor was he given any retrenchment compensation. The termination was therefore illegal. Once termination is held illegal, reinstatement normally follows unless special circumstances exist. No such circumstance is shown here. The Labour Court has, therefore, rightly ordered reinstatement with back wages.

25. This Court, while exercising jurisdiction under Article 227, does not sit in appeal. Interference is permissible only when there is patent error or perversity. I do not find any such error in the Award. The Labour Court has taken a possible and reasonable view. It has based its decision on the evidence and the conduct of the parties. No ground for interference is made out.

26. Hence, following order is passed:

- (i) The writ petition is dismissed.

(ii) The Award dated 25 May 2018 passed by the Labour Court, Thane in Reference (IDA) No. 12 of 2011 is upheld.

(iii) No order as to costs.

(AMIT BORKAR, J.)