

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 6712 OF 2024**

Khushalbhai Waljibai Makwana ... Petitioner

versus

Western Railway- Churchgate & Anr. ... Respondents

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Mr. Shailesh Chavan, appointed through the Legal Aid Committee,  
for the Petitioner.

Mr. Niranjan Shimpi for the Respondents- Railways.

Mr. Atmaram Meghwal, CLA, DRM Office, Western Railway  
present.

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**CORAM : RAVINDRA V. GHUGE &  
ASHWIN D. BHOBE, JJ.**

**DATE : 10<sup>TH</sup> MARCH, 2025**

**P.C. :-**

1. The learned Advocate for the Petitioner has filed this  
Petition after receiving the papers from Legal Aid Committee.

2. Heard the learned Advocates for the respective sides for  
quite some time.

3. The prayers put forth by the Petitioner in paragraph 15  
(a) and 15 (a) (1), read as under :

*“15(a) That this Hon'ble Court may be pleased to direct the Respondents to decide the Representations dated 16.10.2023 given by Petitioner by giving opportunity to Petitioner of being heard within time bound in the interest of justice.*

*(a) (1) That this Hon'ble Court may be pleased to implentation of the order dated 17.12.1997 by the Hon'ble High Court in Contempt Petition No. 57 of 1997.”*

4. The Petitioner was terminated from service after conducting the departmental enquiry. He raised an industrial dispute and the matter was referred to the Central Government Industrial Tribunal No. 2 (the Tribunal), Bombay, vide Reference No. CGIT- 2/47 of 1992. By the part I Award dated 11<sup>th</sup> July, 1995, the departmental enquiry was vitiated and the parties were allowed to lead evidence.

5. The Petitioner was alleged to be unauthorizedly absent from 19<sup>th</sup> January to 20<sup>th</sup> January, 1989. On account of an issue with regard to his leave application form, he abused a Senior Officer and tried to attack him. The charges were proved in employment. At the time of recording the oral and documentary evidence, the Tribunal concluded that the termination of the Petitioner was

unjustified. He was granted reinstatement in service with continuity and back wages vide the Judgment and Award dated 22<sup>nd</sup> December, 1995.

6. The Western Railway approached the Division Bench of this Court in Letter Patent Appeal No. 1120 of 1997 in Writ Petition No. 386 of 1997. The Division Bench of this Court by order dated 10<sup>th</sup> December, 1997 dismissed the Appeal, affirming the dismissal of the Writ Petition by the learned Single Judge.

7. The Petitioner, then, preferred a Contempt Petition bearing No. 57 of 1997. By order dated 17<sup>th</sup> December, 1997, the learned Single Judge Bench recorded a finding that the Respondents should pay to the Petitioner the back wages, within four weeks from reporting for duties and disposed off the Contempt Petition.

8. We are informed that the Petitioner, thereafter, reported for duties, was granted continuity in service and full back wages were paid. Thereafter, the Petitioner was once again terminated from service from 25<sup>th</sup> February, 2002. Since then, he is out of employment.

9.           Thereafter, the Petitioner preferred a Review Petition dated 22<sup>nd</sup> July, 2002 addressed to the Superior Officer. The Competent Authority granted him compassionate allowance amounting to two-thirds of the pension and gratuity on humanitarian ground. Vide the affidavit-in-reply dated 12<sup>th</sup> February, 2025, the Affiant, namely, Amrut U. Solanki, Divisional Personnel Officer, Western Railway, Mumbai, makes specific statements as regards the amounts that have been paid to the Petitioner.

10.          The learned Advocate for the Petitioner submits that the representation tendered by the Petitioner may be considered by the Respondents.

11.          We have perused the said representation delivered to the Respondents on 16<sup>th</sup> October, 2023. Despite being removed from service in 2002, the Petitioner has not challenged the said removal from service. In the representation, he primarily prays for grant of employment in the Indian Railways to his three sons. In addition, he prays that the salary be paid to him as per 7<sup>th</sup> Pay Commission.

12. Once an employee has been disengaged and is out of employment, a terminated employee cannot claim payments to be calculated in terms of the 7<sup>th</sup> Pay Commission recommendations. Insofar as the claim of the Petitioner that his children be granted compassionate employment is concerned, the learned Advocate for the Railways submits, on instructions, that such compassionate appointment scheme is available only if the bread earner died in harness. There is no scheme for recruiting the children of a terminated employee.

13. In view of the above, we do not find that there is any issue left for adjudication.

14. **This Writ Petition is disposed off.**

**(ASHWIN D. BHOBE, J.)**

**(RAVINDRA V. GHUGE, J.)**