

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION / O.O.C.J.

CIVIL WRIT PETITION NO.11232 OF 2024

M/s. Padmabhushan Vasantdada Patil
Pratishthan's College Of Engineering .. Petitioner
Versus
Prashant Ankush Borkar .. Respondent

WITH
O.S. WRIT PETITION NO.2456 OF 2024

Prashant Ankush Borkar .. Petitioner
Versus
Padmabhushan Vasantdada Patil Pratishthan's
College Of Engineering .. Respondent

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- Mr. Shailesh S. Pathak, Advocate for Petitioner in Writ Petition No.11232 of 2024 and for Respondent in Writ Petition No.2456 of 2024.
 - Ms. Nivedita Deshpande, Advocate for Respondent in Writ Petition No.11232 of 2024 and for Petitioner in Writ Petition No.2456 of 2024.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 30, 2025

P.C.:

1. This is a group of two cross Petitions, one filed by M/s. Padmabhushan Vasantdada Patil Pratishthan's College Of Engineering – the College and the other filed by Prashant Ankush Borkar – workman challenging the same Award dated 15.09.2023 passed by the Labour Court, Mumbai in Reference (IDA) No.124 of 2019. By the said Award termination of workman by the College was held to be illegal and unjustified and he was granted reinstatement with continuity of

service and 25% backwages.

2. Writ Petition No.11232 of 2024 is filed by College seeking quashing and setting aside of the Award dated 15.09.2023 and Writ Petition No.2456 of 2024 is filed by the workman seeking enhancement in backwages granted vide the same Award under challenge to 100% i.e. full backwages instead of 25%.

3. Briefly stated facts germane for adjudication of the lis between the parties are as follows:-

3.1. The workman joined the services of the College as a 'wireman' in October 2014 for which he was issued appointment letter on 26.10.2014. According to the workman, every year he was issued a fresh appointment letter / order by showing artificial break in service despite he having worked continuously during the said artificial breaks, however in July 2018 he was orally terminated from service w.e.f. 01.06.2018.

3.2. In view of the aforesaid the workman raised grievance before the Labour Commissioner after which Reference (IDA) No.124 of 2019 was referred by the appropriate Government. On 15.07.2017 the workman filed his statement of claim and on 18.02.2020 the College filed its written statement. Both parties led their respective evidence before the learned Labour Court and on 15.09.2023 the learned Labour Court passed the Award dated 15.09.2023 which is under

challenge in both the Writ Petitions before me.

4. Mr. Pathak, learned Advocate for the College would at the outset submit that the Conciliation Officer should not have referred the matter to the Labour Court as it was clearly brought to his notice that the workman was appointed for a fixed term basis for specific period to complete the electrical work in the College building however the Conciliation Officer failed to exercise his powers under Section 12 of the ID Act.

4.1. He would submit that the Labour Court ought to have considered that the case of the workman in the present case would not fall under illegal termination or retrenchment as the same falls under Section 2(o)(bb) of the Industrial Disputes Act, 1947 (for short “**ID Act**”) which explicitly excludes termination of service of a workman which is result of non-renewal of his contract from the umbrella of ‘retrenchment’. He would submit that admittedly the workman was bound by the terms of his appointment orders issued to him from time to time viz. 26.12.2014, 01.06.2015, 01.07.2016, 05.06.2017 which categorically mention that his appointment as wireman shall be purely on temporary basis for 11 month period at a time. He would submit that his last appointment letter dated 05.06.2017 mentions his tenure from 06.06.2017 to 31.05.2018 and thereafter he was not issued further appointment order as his services were not required by the

College. He would submit that under such circumstances wherein there is no termination but sheer non-renewal of services / contract of the workman, the Labour Court ought to have considered that the same is covered by the exclusion provided under Section 2(oo)(bb) of the ID Act.

4.2. He would submit that an employee cannot claim absorption in services in employment unless there is specific averment to that effect in the appointment letter / order. He would submit that the Labour Court ought to have considered the fact that the College already had a permanent wireman namely Mr. Nitin Pawar working with the College since 2014 and therefore it did not require 2 wireman. He would submit that the Labour Court had not taken into account various relieving letters issued to the workman from time to time when his 11 month tenure was completed intermittently. He would submit that there is no evidence led by the workman either to show that the work performed by him was of a permanent nature or that he was appointed on permanent basis. On the contrary he has accepted and acknowledged the appointment and relieving letters issued to him by the College which proves that he was never in continuous service with the College. He would submit that the workman has in his affidavit of evidence admitted that he was not required to sign the muster roll in the College which itself proves that he was a temporary employee.

4.3. In support of his submissions, Mr. Pathak has referred to and relied upon the following decisions of the Supreme Court and this Court:-

- (i) *Escorts Limited Vs. Presiding Officer and Anr.*¹;
- (ii) *Prakash Pandurang Sawant Vs. Punjab and Sind Bank and Ors.*²;
- (iii) *Managing Director, Karnataka Handloom Development Corporation, Ltd. Vs. Mahadeva Laxman Raval*³;
- (iv) *Municipal Council, Samrala Vs. Raj Kumar*⁴;
- (v) *Kanga and Company Vs. State of Maharashtra and Ors.*⁵;
- (vi) *Nilesh M. Mahadeshwar Vs. Presiding Officer CGIT No.1, Mumbai*⁶ and
- (vii) *Executive Engineer, O & M Division, MSEDCL and Ors. Vs. Pranay Pramod Bansod*⁷.

4.4. In view of his above submissions, he would urge the Court to quash and set aside the Award dated 15.09.2023 passed by the Labour Court.

5. *PER CONTRA*, Ms. Deshpande, learned Advocate for the workman would at the outset submit that Section 2(oo)(bb) of the ID Act would not be applicable to the facts of the workman in the present case as the services rendered by him were of a permanent and continuous nature. She would submit the the College's stance that the

1 (1997) 11 SCC 521
 2 2007 (114) FLR 675
 3 2006 (4) LLN 749
 4 2006 (1) LLN 59
 5 Writ Petition No.2451 of 2006 decided on 13.10.2006
 6 2009 (2) Mh.L.J. 828
 7 2025 SCC OnLine Bom 1165

workman was appointed only because AICTE had withdrawn approval due to which they had to carry out certain structural changes for getting the approval cannot be countenanced as a measure to employ the services of the workman temporarily since the College received approval from the AICTE in 2016-17 despite which services of the workman were continued and availed and renewed by the College upto May 2018. She would submit that the Labour Court has considered the same and in paragraph Nos.19 and 24 of the Award returned a categorical finding on the above issue. In support of her submissions she has referred to and relied upon the decision of this Court in the case of *Sunil Pralhad Khomane and Ors. Vs. M/s. Bajaj Auto Ltd.*⁸

5.1. She would submit that the workman has placed on record before the Labour Court his bank statements which clearly demonstrate that he was paid his salary even for the artificial breaks given by the College. She would submit that hence continuity in service of the workman from October 2014 to May 2018 is proved by him by leading positive evidence which has remained unchallenged before the Labour Court and the College has not led any evidence in rebuttal to disprove the above case.

5.2. In so far as challenge to the Award dated 15.09.2023 by the workman for increase in the grant of backwages to 100% is concerned

⁸ 2021 (5) Mh.L.J. 166

she would submit that the workman being a wireman has led uncontroverted evidence before the Labour Court which proves that he was not gainfully employed after his illegal termination by the College. She would place reliance on the decision of the Supreme Court in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhupak*⁹ to contend that when cogent evidence is led by the employee that he was not gainfully employed then in case of wrongful termination by the employer, the employee has to be paid full backwages for his suffering.

5.3. In view of her above submissions she would urge the Court to allow Writ Petition No.2456 of 2024 and thereby modify the Award dated 15.09.2023 to the extent of increasing the backwages awarded to the workman from 25% to 100% i.e. full backwages.

6. I have heard Mr. Pathak, learned Advocate for the College and Ms. Deshpande, learned Advocate for the workman and with their able assistance perused the record and pleadings of the case. Submissions made by the learned Advocates have received due consideration of the Court.

7. In the present case, the principal grievance raised by the College is that the case of workman is governed by the exception provided in Section 2(oo)(bb) of the ID Act. From the facts and record

⁹ 2013 (139) FLR 541

of the case it is seen that the workman was initially appointed as wireman from October 2014 till 29.05.2015. Perusal of the appointment orders reveal that thereafter his services were renewed and continued intermittently by giving artificial break. The workman however has placed on record his bank statement for the period from December 2014 to July 2018 which has been marked as Exhibit 'U-2/5' and also his bank passbook marked as Exhibit 'U-9' which show that he was paid salary by the College even during the alleged break period which falsifies the stance of the College that he was appointed solely on contractual and temporary basis. The said evidence has remained uncontroverted and unchallenged.

8. In this regard it would be fruitful to refer to a decision of the Gujarat High Court in the case of *Junagadh Municipal Corporation Vs. Dipakbhai Pratapbhai Karamata*¹⁰ wherein the Court has referred to a plethora of cases on interpretation of the definition of retrenchment under Section 2(oo) of the ID Act and its exception under Section 2(oo)(bb) of the ID Act. The Court held that a plain reading of Section 2(oo)(bb) makes it clear that term based employment would fall outside the scope of 'retrenchment' so long as the requirement of such fixed period of employment was bona fide required by the employer. It held that such excepted categories require a rigorous test rather than accepting the plea of employer on its face value or otherwise it would

¹⁰ MANU/GJ/0945/2020

cause serious prejudice to an employee, who can be taken for a ride by unscrupulous employers by contending that the term of employment was for specific period though as a matter of fact such period of employment lasted quite for a long spell. It observed that though the requirement of employment was perennial by adopting the methodology of employing a person for a specific period as many a times, an unscrupulous employer can always resort to abusing the provision contained in Section 2(oo)(bb) to thwart the other statutory protection available to an employee under Section 2(oo), namely, in the case of a 'retrenchment' vis-a-vis the consequential benefits contained under Section 25-F of the ID Act. It held that when such extraordinary circumstances are brought out in the matter of employment and termination is resorted to by taking umbrage under Section 2(oo)(bb) of the ID Act, a close scrutiny of the real position will have to be necessarily made to rule out the possibility of any injustice being caused to an employee. It held that Section 2(oo)(bb) is specifically meant to cover only such employment which would be needed for an employer for a specific period alone and beyond which the requirement will not be there and even on such occasions, the employer should not be put into an unnecessary predicament of facing the other consequences that would normally occur while resorting to retrenchment and the benefit of the said exception will have to be strictly restricted to such specific situations alone and the same cannot

be allowed to be misused or abused by the employers even in regard to cases where the nature and requirement of employment is perennial.

9. The observations made by the Gujarat High Court in the above case are squarely applicable to the facts in the present case moreover when the workman has led cogent evidence by way of his bank statements and bank passbook to prove his continuous service for more than 3 years and 7 months which has gone uncontroverted. In view of the cogent evidence led by the workman it cannot lie in the mouth of the employer i.e. College that he was appointed for a specific period on temporary basis.

10. The Affidavit dated 02.07.2025 filed by the College states that there is only one post of wireman in the college, on which one Mr. Nitin Pawar is engaged. It is contended by the workman that initially the said Mr. Nitin Pawar was engaged by adopting similar *modus operandi* of issuing him an appointment letter intermittently for period of 11 months despite he working continuously and only pursuant to he raising a dispute, he was absorbed in permanent service by the College. Thus the *modus operandi* followed by the College i.e. employer in the present case clearly stands exposed. Conduct of the College is *prima facie* nethical and unfair and cannot be accepted. Neither the submissions advanced by Mr. Pathak. Rule of law prevails and will have to be scrupulously followed, otherwise it will amount to bondage

and subjugation at the mercy of the College i.e. employer in this case.

11. In view of the facts and circumstances of the case and my observations and findings thereon, the challenge maintained by the College in Writ Petition No.11232 of 2024 fails.

12. In so far as the plea of the workman for enhancement of the 25% backwages granted in the Award to 100% backwages is concerned, there is nothing placed on record which shows that he was gainfully employed subsequent to his termination.

13. In this regard a useful reference can be made to the decision of this Court (Coram: N.J. Jamadar, J.) in the case of *M/s. S.K. International and Anr. Vs. Ashok Tanaji Tambe and Anr.*¹¹ wherein this Court while referring to a series of judgments on the issue of grant of backwages held that in case of wrongful termination of services, reinstatement with continuity of service and backwages is a normal measure of restitution, however, this is not an immutable rule of law and departure from the said rule can be made upon consideration of all the factors which influence the exercise of discretion like the length of service rendered by the employee before the termination, nature of the misconduct alleged and proved, the peculiar circumstances of the employer bearing upon its capacity to bear the burden of payment of backwages; whether the industrial establishment has been closed down

¹¹ Writ Petition (L) No.809 of 2023 decided on 01.12.2023.

or in financial doldrums, and whether in the intervening period the employee has been gainfully employed. The Court further held that nature of the termination also assumes salience as if the termination appeared to be malafide or wholly unjustified without there being an ounce of fault on the part of the employee and in that case, denial of backwages would put premium on the illegality on the part of the employer. It was further observed that the nature of the employment i.e. permanent or casual also deserves to be taken into account and if an employer could resort to again terminating the employee by complying with the statutory requirements, the order of reinstatement with full backwages may not suit the purpose.

14. Applying the above principles to the case at hand, it needs to be considered that the workman herein has rendered his services to the College continuously for more than 3 years and 7 months which has been recorded by the Labour Court in its Award. He has placed his bank statements and passbook on record to show his continuous employment with College and also that he was not gainfully employed elsewhere. There is neither any contention raised nor any evidence placed on record by the College that he was gainfully employed after his termination by College. In such circumstances considering the length of service of workman with the College and the *malafide modus operandi* on part of the College of employing him by giving artificial break between each appointment, I am of the opinion that since the

workman before me is an electrician, he may have had some difficulty in surviving during the said period and hence grant of 25% backwages is on the lower side and the workman herein deserves to be granted atleast 50% backwages.

15. In view of the above and the observations and findings arrived at by me which are delineated hereinabove, the Award dated 15.09.2023 is modified to the extent of granting 50% backwages to the workman. Rest of the Award dated 15.09.2023 is upheld and confirmed and shall remain as it is.

16. All parties are directed to act on a server copy of this order.

17. With the above directions, Writ Petition No.11232 of 2024 is dismissed. Writ Petition No.2456 of 2024 is partly allowed and disposed.

[MILIND N. JADHAV, J.]

18. After this order has been pronounced in Court Mr. Pathak, learned Advocate appearing for Petitioner in Writ Petition No.11232 of 2024 requests this order to be kept in abeyance for a period of four (4) weeks. At his request present order shall stand stayed for a period of four (4) weeks from today to enable the College to approach the Superior Court.

[MILIND N. JADHAV, J.]