

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12730 OF 2025**

Ceraflux India Private Limited
F-59, 60, MIDC Gokul Sihrgaon,
Kolhapur 416 234

....Petitioner

VERSUS

Sunil Dipak Patil
Age: 37 years, Occu: Nil,
R/p. Plot No. 7B, Shahu Mill Colony,
Rajarampuri, Kolhapur.

.....Respondent

Mr. M. S. Topkar i/by Ms. Bhargavi Patil, Mr. Neev Patil, B. D. Manolkar, Mr. Mark Dhanwade, advocate for the petitioner.
Mr. Dheeraj D. Patil a/w Mr. Vidyasagar Chavan, advocate for respondent.

CORAM : SACHIN S. DESHMUKH, J.

DATED: 18th APRIL 2026.

JUDGMENT:

1. Rule. Rule made returnable forthwith. By consent of the parties, Petition is finally decided at the admission stage.
2. Petitioner raises an exception to the order rendered by the Industrial Court, Kolhapur in Revision Application (ULP) No. 29/2024, allowing the application presented by the employee and directing the petitioner herein to allow the employee to resume duties and pay due (wages) salary till final adjudication of the

complaint.

3. The Respondent employee was appointed by the Petitioner in the year 2008 and eventually became permanent employee. Upon attaining permanency, an employee is conferred with statutory protections and before imposing any penalty or initiating action, predominantly and essentially, the employer has to take recourse to the statutory provisions. Those are aimed to confer protection to the employees.

4. However, the initiation of prosecution against the respondent, the petitioner herein issued a show cause notice calling upon the explanation from the respondent. The employee replied by stating the false implication for ulterior motive.

5. Dehors the statutory provisions, the petitioner issued a letter of termination with an assertion that the employee remained absent and also suppressed registration of F.I.R. in relation to the alleged incident. In the wake of aforesaid aspect having lost the confidence of the petitioner, as such order of dismissal was served.

6. Raising an exception to the order of dismissal, the employee presented Complaint (ULP) No. 04/2023 under Section 28(1) r/w Schedule IV item 1(a), 1(b), 1(c), 1(d), 1(f) and (g) of The

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (Hereinafter referred to as 'the said Act') contending that the petitioner herein has indulged in unfair labour practice while dismissing employee, which entails reinstatement with continuity of service along with other service benefits. Coupled with the same, the application seeking reinstatement was also presented.

7. The Petitioner resisted the claim presenting its written statement. The Labour Court by its order dated 10/07/2024 decided the application under Section 30(2) of the said Act. It is thereafter, the employee approached the Industrial Court presenting Revision Application No. 29/2024. The Industrial Court while regarding the order of termination as illegal, perverse and resultantly, allowed the Revision directing the petitioner herein to allow the complainant to join the duty and pay due salary till final adjudication of the complaint pending before the Labour Court.

8. In the aforesaid backdrop, Learned counsel for the petitioner submits that the Industrial Court is not justified in rendering the order directing the reinstatement of the employee as an interlocutory measure, since the employer has every right to justify

the termination before the Tribunal and the interim relief of final nature, at an interim stage ought not to have been granted.

9. In the process, learned counsel for the petitioner has placed reliance on the following Judgments in support of his contentions:

- i. *Zilla Parishad V. Maya Tukaram Sonawane*¹,
- ii. *Executive Engineer, M.S.E.B. Morshi and Anr V. Industrial Court, Amravati*²,
- iii. *Air India Corp., Bombay v. V. A. Rebellow*³,
- iv. *Uttarakhand and Others V. Sureshwati*⁴
- v. *Maruti Krishna Naik V. Advani Oerlikon Ltd. And Ors*⁵.

10. *Per contra* learned counsel for the Respondent has supported the order submitting that in the wake of the fact that the employee who has attained permanency is entitled to statutory protections and those cannot be rendered redundant by the employer while terminating the services of the employee in an unprecedented manner. The termination of the employee is in gross violation of the

1 2016(7) All M.R. 652

2 2001(3) Mh.L.J.

3 1972 SCC Online SC 128

4 SCC Online SC 3

5 2025 II CLR 455

provisions of the standing orders. Therefore, the Industrial Court is justified in rendering the order of reinstatement as such prayed for dismissal of petition and to buttress the same, placed reliance on the following Judgments:

- i. *Hrishikesh Vasantrao Kumbhar, Sangli V. Zilla Parishad, Sangli, through its Chief Executive Officer and ors*⁶
- ii. *M/s. Glaxo Laboratories (I) Ltd Vs. Presiding Officer, Labour Court, Meerut and Ors*⁷.

11. Upon considering the rival submissions and material on record undoubtedly, the respondent-employee was appointed in the year 2008 and as such, has attained permanency. Resultantly statutory protections are conferred upon the permanent employee. On the anvil of permanency of the employee, in the event the employer proposes to initiate any action and impose penalty, either minor or major, essentially the employer has to take recourse to the statutory provisions since imposition of penalty is regulated and controlled by the standing orders.

12. Being a permanent employee, necessary recourse ought to have been taken to the standing orders, more particularly Sub Rule

⁶ 2016 III CLR 354

⁷ (1984) 1 Supreme Court Cases 1

(4) of Order 23 of The Maharashtra Industrial Employment (Standing Orders) Rules, 1959 which reads as under:

“23 (4) The employment of a permanent workman employed on the monthly rates wage period of wages may be terminated by giving him one month's notice or on payment of one month's wages (including all admissible allowances) in lieu of notice.”

13. Although the term ‘may’ is used in Sub Rule (4) of Order 23, same is to be construed as mandatory, as the legislative intent behind the expression carries mandatory force. In interpreting the legal import of ‘may,’ this Court must consider factors such as the object and scheme of the Act, the context of its usage, and the purpose and the mischief sought to be addressed. These stipulations suggest that the expression mandates strict compliance. If the term were interpreted as merely directory, the significance of the statutory mandate would be frustrated. Therefore, to uphold the object of the Act, ‘may’ has to be read as conveying mandatory force. This principle is no more res integra, in the wake of verdict of the Hon’ble Apex Court in **Bachahan Devi & Anr. vs. Nagar Nigam, Gorakhpur and Anr**⁸.

⁸ 2008 (12) SCC 372

14. A bare perusal of the Sub-Rule (4) of Order 23 of the said Rules, unequivocally indicates the recourse to issue notice was essential, in lieu of salary or one month salary in advance before serving the order of dismissal, which is a major penalty. Imposition of penalty is controlled and regulated by the standing orders.

15. If the Statute requires an act to be done in a particular manner, that can be achieved only through a prescribed manner or not at all. The said issue is no more *res integra* in the light of the Judgment of the Hon'ble Apex Court in the case of ***Municipal Corporation Of Greater Mumbai (MCGM) Vs. Abhilash Lal & Ors.***⁹

16. Similarly, in the case of ***State of Punjab v. Baldev Singh***¹⁰ the Hon'ble Apex Court has held that where the statutory provisions has a very serious repercussions, it implicitly makes it imperative and obligatory on the part of the authority to have strict adherence to the statutory provisions. All the safeguards and protections provided under the statute have to be kept in mind while exercising such power. The statutory mandate in any eventuality cannot be annihilated by the petitioner while dismissing the employee.

17. When confronted with the same, learned counsel for the

⁹ (2020) 13 SCC 2341

¹⁰ (1999) 6 SCC 172

petitioner Mr. Topkar in fairness has conceded the fact that the Sub Rule (4) of Order 23 of the said Rules is not complied with, however, the order of dismissal does not preclude the petitioner from justifying its action of dismissal before the Tribunal.

18. The submission of the petitioner that once it is found that no domestic inquiry has been held or the inquiry is found to be defective, the case of defective inquiry stands at par as that of no inquiry which entitles the petitioner to extend the opportunity to the employer and to adduce the evidence before it, and it is always open for the employer to adduce evidence justifying its action. There is no debate in that regard, however, the issue which falls for consideration is in relation to the entitlement of employee to statutory protection and the effect of departure of same while initiating drastic action of dismissal would entail reinstatement.

19. So far as the submissions of the learned counsel for the petitioner that the employer has every right to defend its action before the Tribunal justifying the termination. There is no debate in regard to the said principles, however, the same cannot be pressed into service when an interlocutory order of reinstatement is rendered by the Industrial Court after taking into account the

entitlement of employee for reinstatement.

20. Nevertheless, the abrupt discontinuance of such long standing engagement solely on the basis of alleged incident, veracity of the same is subject matter of trial.

21. At this juncture, it would be appropriate to make reference to the mandate of the Hon'ble Apex Court in the case of ***Abhilash Lal*** (*Supra*) which reiterates the principle that if a statute requires a thing to be done in a particular manner, it should be done in that manner or not at all. As such, in absence of strict compliance with the statutory mandate on the part of the petitioner while passing the order of dismissal which is drastic in nature, the employee has made out a *prima facie* case and the same is appreciated in the letter and spirit by the Industrial Court while allowing the Revision.

22. In any case, the Petitioner is not absolved from complying with the safeguards and protection available to employee under the Statute to the employee, while exercising the power of initiating inquiry including dismissal. However, under no eventuality, departure with the statutory protection is permitted. The statutory rules and regulations are aimed to confer the protection to the

employee and those cannot be rendered redundant in the manner which the petitioner has taken.

23. Further, reliance can be placed upon the case of ***Deoraj Vs. State of Maharashtra and ors***¹¹ wherein the Hon'ble Apex Court underscored the necessity of preventing irreparable hardship and ensuring that the ultimate relief is not rendered nugatory upon satisfaction that there exists *prima facie* case. Applying those principles in the instant case, the Industrial Court rightly exercised its discretion to safeguard and ensure the ends of justice were met during the pendency of the proceedings.

24. Thus, in my considered view, the decisions on which the reliance is placed by the petitioner are rendered in peculiar facts and circumstances of each individual case. As stated herein above, respective employer in the aforesaid judgments has conducted an inquiry which eventually culminated into the order of dismissal. Therefore, in view of the distinguishing fact, the judgments in cases upon which the reliance is placed would be of no assistance to advance the case of the petitioner, having considered the peculiar

¹¹ 2004 (4) SCC 697

facts of the present case.

25. So far as the reliance placed by the learned counsel for the respondent on the Judgment of the Division Bench of this Court in the case of ***Hrishikesh Kumbhar*** (Supra) wherein the Division Bench of this Court has held that taking into consideration the private dispute, *prima facie* would have no foundation regarding any misconduct in discharge of official duty of the employee and secondly, even the employee is sought to be dismissed on the basis of sexual assault, there was no material available at the time when the impugned order of dismissal was issued, except the bald assertion of the complainant in that case. In view of above, the order of Industrial Court of reinstatement does not warrant consideration.

26. In the light of aforesaid peculiar facts and circumstances, I am of the considered view that the order rendered by the Industrial Court does not warrant interference by this Court in its extraordinary writ jurisdiction under Article 227 of the Constitution of India.

27. Resultantly, the petition sans merits. Accordingly, the same

stands dismissed.

28. Rule is discharged.

[SACHIN S. DESHMUKH, J.]

IRESH
MASHAL

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