

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1447 OF 2026

Smt. Jyoti Janardhan Pawar,
Age : 49 years, Occ : Service,
At Post Parchuri, Taluka Ratnagiri,
District Ratnagiri

... **Petitioner**

VERSUS

Divisional Controller,
Maharashtra State Transport Corporation,
Ratnagiri

... **Respondent**

Advocate for Petitioner : Ms. Bhargavi Patil a/w Mr. Neev Patil
Advocate for Respondent : Mr. Dhananjayrao Ravanaware a/w Mr.
Shubha, S. Dhoble

CORAM : SACHIN S. DESHMUKH, J.

Date : 2nd April, 2026

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.
2. The petitioner challenges the order dated 07.01.2026 passed by the Industrial Court No. I, Kolhapur, in Complaint (ULP) No. 82 of 2022.

3. The petitioner contends that having served as a conductor with the respondent-Corporation since 2011 with an unblemished service record, the petitioner filed a statement of claim raising a grievance regarding the computation of her attendance. The dispute centers on the qualifying criteria of 240 days of attendance for the preceding three years, which determines an employee's legitimate entitlement to promotion.

4. Pursuant to the circular dated 28.06.2019 regarding the career assured progress scheme, an employee must work continuously for 240 days in each of the three preceding years. The petitioner contends that the respondent excluded her name from the eligibility list misinterpreting the circular and statutory provisions. It is alleged that the Corporation erred by counting only actual working days, whereas the calculation should legally include Sundays and other holidays. Consequently, the petitioner asserts that the respondent engaged in unfair labour practices under Items 5, 9, and 10 of Schedule IV of the MRTU and PULP Act, 1971.

5. The respondent Corporation resisted the complaint by filing a counter refuting the petitioner's claims. The respondent submitted that the petitioner remained ineligible as failed to satisfy

the mandatory condition of completing 240 days in each preceding year as stipulated by the circular. By maintaining that the petitioner did not meet the technical threshold for promotion, the Corporation argued that the claim warranted no further consideration.

6. After considering the submissions, the Industrial Court rendered a decision dismissing the complaint. This dismissal is the subject matter of challenge in the present petition, where the petitioner seeks to address the perceived failure of the lower court to recognize the settled principle that continuous service in labour welfare legislation often encompasses days for which an employee is entitled to wages, including statutory weekly offs.

7. The learned counsel for the petitioner submitted that the Industrial Court erred in interpreting the requirement of 240 days as strictly meaning actual physical attendance. It was argued that the computation wrongly excluded weekly offs, paid leaves, and holidays, which are mandatory inclusions under the statutory framework. The petitioner contended that this legal issue is no longer *res integra*, in view of verdict of the Honourable Supreme Court in **Workmen of American Express International**

Banking Corporation vs. Management of American Express International Banking Corporation [(1985) 4 SCC 71], which clarified that actual work encompasses all days for which an employee is entitled to wages.

8. The learned counsel submitted that the respondent Corporation's misinterpretation and misreading arbitrarily denies the petitioner's legitimate entitlement to promotion, which is a legitimate right arising from petitioner's status as a regular employee. Failure to recognize these principles, the Industrial Court arrived at an erroneous finding that no unfair labour practice had been demonstrated. This oversight ignored the established mandate that beneficial labour legislation must be interpreted purportedly to protect the worker's continuous service record rather than to create technical glitches for career progression.

9. Per contra, the learned counsel for the respondent-Corporation supported the impugned order, submitting that the petitioner failed to satisfy the essential eligibility criteria prescribed in the circular dated 28.06.2019. It was argued that since the petitioner did not complete 240 days of actual attendance in each preceding year, the claim is unfounded and runs contrary to the

Corporation's established policy. The respondent maintained that the determination of eligible candidates was carried out by a Committee acting in strict adherence to the circular's mandates.

10. Furthermore, the learned counsel for respondent categorically denied any assertion of unfair labour practices, contending that the exclusion was a result of technical non-compliance rather than any mala fide intent. The counsel submitted that the Corporation is bound by its own administrative guidelines for promotions. Consequently, the respondent urged that the findings of the Industrial Court deserve to be endorsed dismissing the present petition.

11. Upon hearing the learned counsel for both parties and perusing the material on record, it is evident that several key aspects remain undisputed. The petitioner was appointed as a Conductor with the respondent Corporation in 2011. The Corporation issued a circular on 28.06.2019 governing departmental promotions, leading to the preparation of an eligibility list on 22.07.2022. The petitioner has raised an objection to this list, specifically challenging the method used to compute attendance record.

12. Against this backdrop, the petitioner approached the Industrial Court, where the respondent Corporation contested the maintainability and merit of the complaint. The issue for this Court's consideration is the correct legal interpretation of "240 days of continuous service" for the purpose of determining employee benefits. To resolve this, it is necessary to refer to the statutory definition of continuous service provided under Section 25-B of the Industrial Disputes Act, 1947, which reads as under

"25-B. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of Clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine: and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine and

(ii) one hundred and twenty days, in any other case.

Explanation-For the purposes of clause(2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the [Industrial Employment \(Standing Orders\) Act, 1946](#), or under this Act or under any other law applicable to the Industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks."

13. The Industrial Disputes Act is a welfare legislation. The intention behind the enactment was to protect the employees from arbitrary retrenchments. Section 25(b) of the Act provides that when a person can be said to have worked for one year and the very reading of the said provisions makes it clear that if a person

has worked for a period of 240 days in the last preceding year, is deemed to have worked for a year.

14. The theory of 240 days for continuous service establishes that a workman is deemed to have been in continuous service for one year if, during the twelve calendar months preceding the relevant date, they have actually worked under the employer for no less than 240 days. This legal principle, as contemplated under Section 25-B of the Industrial Disputes Act, 1947, was categorically addressed by a three-Judge Bench of the Hon'ble Apex Court in the case of **Surendra Kumar Verma and Others vs. Central Government Industrial Tribunal-Cum-Labour Court, New Delhi and Another [(1980) 4 SCC 443]**. The Court clarified that the computation of this period must be viewed through the lens of social welfare legislation, ensuring that technicalities do not defeat the substantive rights of the workman.

15. The respondent Corporation has fundamentally misread and misinterpreted the mandate of Section 25(b) of the Industrial Disputes Act, 1947, by restricting the computation of the petitioner's service strictly to actual physical working days. Such approach erroneously excludes period that is statutorily required to

be included under the expression of "continuous service" as defined in the Act. It is a settled legal principle that administrative circulars cannot override or denude the statutory protections afforded to an employee; therefore, the respondent's heavy reliance on the circular dated 28.06.2019, in ignorance of the parent statute, cannot be sustained.

16. In that view of the matter, I am of the considered view that the Corporation misread and misinterpreted provision while excluding the petitioner from the eligibility list for departmental promotion. By failing to correctly apply the statutory provisions of Section 25-B(2) of the Act of 1947, the respondent arrived at a incorrect calculation that deprived the petitioner of legitimate entitlement. Furthermore, the Industrial Court committed a manifest error by endorsing this calculation and ignoring the benefits legally available to the petitioner. Such an oversight has resulted in a denial of the petitioner's status as a regular employee qualifying for career progression.

17. In light of these observations, it is appropriate to relegate the parties to the Industrial Court for a fresh adjudication. As such, the impugned order is set aside and the matter is

remanded to the Industrial Court, Kolhapur, which shall reconsider the case of the litigating sides in the backdrop of the observations made herein.

18. The Court must ensure that the computation of the 240-day period is performed in strict accordance with the law laid down by the Hon'ble Supreme Court, ensuring that statutory holidays and weekly offs are not excluded from the petitioner's service record for the purpose of career progression.

19. The writ petition is partly allowed and disposed of, accordingly.

20. Rule is made **absolute** in the above terms.

(SACHIN S. DESHMUKH, J.)

Omkar Joshi