

AGK

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

WRIT PETITION NO.11397 OF 2024

Sanjay Manya Dongarkar,
Age 40 years, Occupation Nil,
R/at Post Chimbawe, Kosbad Hill,
Taluka Dahanu, District Palghar

... Petitioner

Vs.

Gokhale Education Society,
Kosbad Hill, Taluka Dahanu,
District Palghar

... Respondent

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Mr. Mayuresh Modgi for the petitioner.

Mr. Graham Francis i/by Mr. Vishwanath Talkute for
the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 16, 2026.

PRONOUNCED ON : APRIL 30, 2026

JUDGMENT:

1. By the present petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner has called in question the legality, correctness, and propriety of the Judgment and Award dated 27 March 2024 delivered by the learned Fourth Labour Court, Thane in Reference (IDA) No. 164 of 2019, whereby the industrial reference came to be answered against the petitioner.

2. The brief facts giving rise to the present proceedings, as set out by the petitioner, are that the petitioner came to be appointed as a watchman in the Training Centre conducted by the respondent institution at Kosbad Hill with effect from 21 October 2003. It is the case of the petitioner that he had earlier instituted proceedings alleging unfair labour practices, being Complaint (ULP) No. 263 of 2013. The said complaint, however, came to be withdrawn on 25 July 2013 on the assurance allegedly extended by the respondent that the petitioner's son would be appointed in his place. Thereafter, the services of the petitioner came to be terminated by communication dated 20 February 2018. It is further the case of the petitioner that the respondent had issued an advertisement in the year 2008 for filling various sanctioned posts, including the post of watchman, wherein the prescribed age criteria was stated to be 31 to 35 years. According to the petitioner, he satisfied the said eligibility condition on the relevant date. Being aggrieved by the order of termination, the petitioner approached the Deputy Commissioner of Labour, Thane. Upon hearing the parties, the learned Deputy Commissioner of Labour was pleased to refer the industrial dispute for adjudication to the Labour Court, and the said dispute was thereafter registered as Reference (IDA) No.164 of 2019.

3. Before the Labour Court, the petitioner filed his statement of claim and the respondent entered appearance and filed its written reply. The petitioner examined himself in support of his case. The respondent, however, did not examine any witness. Upon appreciation of the pleadings and material placed on record, the

learned Labour Court passed the Award dated 27 March 2024 and answered the reference in the negative. The petitioner states that he obtained a certified copy of the Award from the office of the Commissioner of Labour, Thane on 4 July 2024. Being dissatisfied with the said Award, the present writ petition has been filed.

4. Mr. Modgi, learned counsel appearing for the petitioner, submitted that the conduct of the respondent squarely attracts Item 10 of the Fifth Schedule to the Industrial Disputes Act, being an unfair labour practice. He contended that neither the original advertisement nor even a copy thereof relating to the post of watchman was produced by the respondent before the Labour Court. It was urged that there was no specific pleading by the respondent indicating in what manner the petitioner was allegedly ineligible for appointment. Learned counsel submitted that if the advertisement was issued in the year 2008, the same would not invalidate the petitioner's earlier appointment made in the year 2003. Even otherwise, according to him, the petitioner fulfilled the age criterion on the date of his initial engagement. It was further argued that the respondent is not a governmental authority in the strict sense and, therefore, the standards sought to be applied by the respondent were misconceived. According to him, the service conditions of the petitioner are governed by the provisions of the Industrial Employment (Standing Orders) Act, 1946. He also emphasized that the respondent failed to enter the witness box and no evidence was led on its behalf.

5. Learned counsel for the petitioner further submitted that the post of watchman allegedly shown as reserved for open category in

the purported advertisement was unsupported by any circular, roster, notification or sanctioned vacancy position. According to him, the order of termination is vitiated by mala fides and arbitrariness. It was then urged that even assuming, without conceding, that the petitioner was not eligible under the criteria mentioned in the advertisement of 2008, the respondent nevertheless continued him in service for nearly ten more years. Such prolonged continuation, according to the petitioner, clearly demonstrates that the respondent intended to utilise the petitioner as cheap labour without conferring lawful service benefits. Learned counsel pointed out that the petitioner has stated on oath that after termination he has not secured alternate employment. On these premises, reinstatement with continuity of service and full back wages was prayed for.

6. Per contra, Mr. Francis, learned counsel appearing for the respondent, opposed the petition and submitted that the respondent institution receives grant-in-aid from the Government of Maharashtra and appointments of employees are required to be made strictly in accordance with rules and norms prescribed by the State Government. It was contended that the respondent had no independent authority to grant permanency or regular appointment to any person dehors the governing rules. According to the respondent, the petitioner ought to have availed remedies before the Divisional Commissioner, the Maharashtra Administrative Tribunal, or the School Tribunal, as may be applicable. It was further submitted that the petitioner answers the description of a public servant under the Maharashtra Civil

Services Rules and, therefore, the present proceedings before the Labour Court were not maintainable. Learned counsel submitted that the petitioner was appointed as a night watchman on 21 October 2003 on a fixed honorarium of Rs.2,050/- per month and that the appointment was purely temporary in nature. It was also contended that the post was meant for open category candidates and the petitioner had crossed the upper age limit. Consequently, his services could not be regularised under the applicable rules and regulations. Learned counsel for the respondent further submitted that the services of the petitioner came to be discontinued with effect from 20 February 2018 since he was merely a temporary and ad hoc appointee. According to the respondent, the petitioner is attempting to secure a back-door entry into permanent service by seeking reinstatement through judicial proceedings, which cannot be countenanced in law. It was lastly submitted that the competent Government authority had refused approval to the petitioner's appointment on the concerned post. On these grounds, dismissal of the writ petition was sought.

7. I have heard the learned Advocates for the parties and I have perused the pleadings, evidence, and the Award passed by the learned Fourth Labour Court, Thane.

8. The broad facts are not much in dispute. The petitioner was engaged as a watchman in the Training Centre of the respondent institution at Kosbad Hill, Dahanu, district Palghar, with effect from 21 October 2003. He was paid fixed honorarium. He continued in service for long years. It is also not in dispute that he had earlier raised a complaint of unfair labour practice and the

same was withdrawn on 25 July 2013 on the assurance said to have been given by the respondent that the petitioner's son would be appointed in his place. Thereafter, the petitioner continued to work till his services were terminated by letter dated 20 February 2018. Thus, the service record shows a long and continuing relationship extending for about fifteen years.

9. The first submission of the petitioner is that the respondent had issued an advertisement in the year 2008 for filling up the post of watchman and the age condition prescribed therein was 31 to 35 years. The petitioner says that he was within the said age criteria. He further says that no original advertisement or proper copy thereof was produced before the Labour Court and the respondent did not explain in what manner the petitioner was ineligible. When an employer relies upon an advertisement and a vacancy chart to justify termination or denial of regular treatment, the employer must produce the best evidence. Here the respondent did not place the original advertisement on record. It also did not lead evidence to show that the petitioner was outside the zone of consideration or that his continuation was unlawful from inception.

10. The petitioner has also submitted that even assuming the advertisement of 2008 is taken into account, it cannot erase the fact that he had already been appointed in 2003 and was allowed to work continuously thereafter. If the respondent itself engaged the petitioner and took work from him for long years, then at a later stage it cannot simply turn around and say that the petitioner was never eligible, without proving the exact rule, the exact

vacancy position, and the exact defect in his appointment. The conduct of the respondent shows that it accepted the services of the petitioner for a very long period. Such long continuation gives rise to a strong inference that the work was available, and the engagement was being utilised by the institution.

11. Learned counsel for the petitioner was right in submitting that the respondent did not step into the witness box. The best person to explain the reason for termination, the vacancy position, the approval status, the recruitment process and the alleged open category reservation was the respondent itself. Yet no such witness came forward. No convincing documentary chain was produced to show that the post was never available for the petitioner or that his continuation was prohibited by any binding rule. If the employer keeps silence on matters specially within its knowledge, then the Court can draw adverse inference. In the present case such adverse inference is clearly available.

12. Another submission of the petitioner is that the services were terminated in a arbitrary manner. The petitioner had already served for years. He had even earlier withdrawn a complaint on the assurance about his son. After such long service, sudden termination without proper explanation reflects arbitrariness. The respondent's case is not that the petitioner remained absent, or was guilty of misconduct, or that there was a disciplinary enquiry. The only defence is that he was temporary and that the post was open category, and he had crossed age. But none of these points were established by reliable evidence.

13. The respondent's stand is that it receives grant and aid from the Government of Maharashtra and appointments are governed by Government rules, and that the petitioner had no right to permanent appointment. Even if that stand is accepted to certain extent, it does not answer the real grievance. Grant-in-aid or regulatory control does not authorise the employer to continue a worker for years and thereafter discard him without proving the legal basis. Mere statement that approval was not granted is not enough unless the respondent produces the refusal, the reasons, and the precise rule under which the petitioner could not be continued.

14. The contention that the petitioner should have approached another forum and that the Labour Court was not competent is also not a good defence in the facts of this case. The petitioner raised an industrial dispute on the footing of unfair labour practice and illegal termination. The reference was duly made by the Deputy Commissioner of Labour. Once the dispute was referred, the Labour Court was bound to examine whether the termination was legal and justified. The respondent participated in the proceedings. Therefore, at this stage, it cannot be heard to say that the matter was hopelessly before wrong forum, particularly when the controversy was one of service termination and unfair labour practice.

15. The respondent's argument that the petitioner was a temporary, ad hoc employee appointed on fixed honorarium of Rs.2,050/- per month also does not carry the matter much further. A temporary label is not decisive by itself. What matters is the

reality of the engagement. Here the reality is that the petitioner was allowed to work continuously for nearly fifteen years. That long period cannot be treated as a stop gap arrangement. If the work was only temporary, the respondent should have shown the temporary nature by proper orders, periodical extensions, or clear contractual limits. No such clear record is produced. Therefore, the label of temporary is not enough to defeat the claim.

16. The respondent also says that the post was reserved for open category and the petitioner had crossed the age limit. This submission is not proved. No proper roster, no sanctioned vacancy chart, no recruitment rules, and no contemporaneous vacancy position were produced. The Labour Court appears to have accepted the respondent's version almost as a matter of assumption. In service jurisprudence, especially where termination affects livelihood, assumptions cannot replace proof. If the respondent wanted to rely on age bar or category restriction, it had to show when the vacancy arose, what was the notified category, and how exactly the petitioner was disentitled. It failed in that duty.

17. Another important factor is that the petitioner deposed on oath that he was not employed elsewhere after his termination. This statement remained un rebutted. The respondent did not bring any contrary material. The petitioner had already been in service for long years. In such situation, when termination is found to be unjustified and the employer has not shown any lawful basis for discontinuance, denial of back wages would also be unjust. The normal consequence of illegal termination in such circumstances is

reinstatement with continuity and back wages, unless there are compelling reasons to deprive the workman of that relief. No such compelling reason is shown here.

18. The submission that the respondent never intended to exploit the petitioner as cheap labour may be stated as a defence, but the conduct speaks otherwise. When an institution takes work of a person for years without regularising his position, without proving any lawful cessation, and then terminates him on unsupported grounds, the inference of exploitation cannot be lightly brushed aside. The petitioner was made to work. He was continued for a long time. The respondent benefited from his labour. When the legal challenge came, it offered only a paper defence.

19. For the reasons recorded in the foregoing judgment, the following order is passed:

- (i) The writ petition is allowed;
- (ii) The Judgment and Award dated 27 March 2024 passed by the learned Fourth Labour Court, Thane in Reference (IDA) No.164 of 2019 is quashed and set aside;
- (iii) The Reference (IDA) No.164 of 2019 stands answered in favour of the petitioner;
- (iv) It is declared that the termination of the petitioner effected by communication dated 20 February 2018 is illegal and unsustainable in law;

(v) The respondent is directed to reinstate the petitioner in service on the post of watchman, or on an equivalent suitable post, within a period of eight weeks from the date of receipt of this order;

(vi) The petitioner shall be entitled to continuity of service for all purposes from the date of termination till actual reinstatement;

(vii) The respondent shall pay to the petitioner full back wages from 20 February 2018 till the date of reinstatement, together with all consequential monetary benefits. The arrears shall be computed and paid within a period of twelve weeks from today;

(viii) In the event the amount is not paid within the stipulated period, the same shall carry interest at the rate of 6% per annum from the date it became due till realization;

(ix) Rule is made absolute in the aforesaid terms.

(x) There shall be no order as to costs

20. At this stage, learned Advocate for the respondent seeks stay of this judgment. Considering the submissions and the effect of the judgment, operation of the judgment is stayed for a period of four weeks from today.

(AMIT BORKAR, J.)