

Shabnoor

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

WRIT PETITION NO. 15103 OF 2024

SHABNOOR
AYUB
PATHAN

Digitally signed
by SHABNOOR
AYUB PATHAN
Date: 2026.03.17
12:30:21 +0530

M/s. Premsons Trading Private Limited,
63, Premsons House B, Desai Road,
Breach Candy, Mumbai – 400 026

... Petitioner

V/s.

Hiraprasad Bindeshwar Yadav,
C/o. Maharashtra Employees' Union,
Kokanipada, Kurar Vilage, Malad (E),
Mumbai – 400 097.

... Respondent

Mr. Shailesh S. Pathak, for the Petitioner.

Ms. Seema Chopda, for Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 5, 2026

PRONOUNCED ON : MARCH 17, 2026

JUDGMENT:

1. By the present Petition instituted under Article 227 of the Constitution of India, the Petitioner assails the Award dated 29 April 2024 passed by the 8th Labour Court at Mumbai in Reference (IDA) No. 74 of 2017. By the said Award, the Labour Court partly allowed the reference and directed the Petitioner to reinstate the Respondent in service with continuity and to pay 60% back wages with effect from 17 August 2015.

2. The Petitioner contends that the Respondent was engaged in its establishment in the year 2013 as a Sales Person and was assigned the work of collecting orders for the Petitioner's products from various customers. The Petitioner disputes the case of the Respondent that he had been in continuous employment since the year 1994 as a Delivery Boy. It is further the case of the Petitioner that the services of the Respondent were never terminated with effect from 17 August 2015 as alleged, nor was any oral termination communicated by Mr. Dheeraj Premji Gala, who is stated to be the Director of the Petitioner Company. According to the Petitioner, the Respondent himself remained absent from duty from 14 April 2015 without any authorization. It is stated that despite several communications issued by the Petitioner calling upon the Respondent to resume duties, he failed and neglected to report for work. The Petitioner asserts that the Respondent remained absent from 14 April 2015 to 29 May 2015, that is for a period of approximately forty five days, on the ground that he had travelled to his native place. On this basis, the Petitioner submits that the allegation of termination of service by the management does not arise.

3. The Petitioner further contends that Premson Trading Pvt. Ltd. and Premsons Bazaar are separate and distinct legal entities. It is the case of the Petitioner that the Respondent was in fact engaged by Premsons Bazaar and not by the present Petitioner. In support of this contention, reliance is placed upon Form-16 produced by the Respondent himself, which indicates Premsons Bazaar as the employer. The Petitioner further states that on 22

August 2015 the Respondent addressed a demand letter alleging illegal termination of service and calling upon the Petitioner to reinstate him with continuity of service and full back wages with effect from 17 August 2015. The Respondent also stated that in the event of failure to comply with the demand he would initiate legal proceedings. Thereafter, on 19 September 2015, the Respondent filed a Justification Statement before the Deputy Commissioner of Labour alleging that his services had been terminated and seeking reinstatement with continuity of service and full back wages. In the said Justification Statement, the Respondent admitted that from the year 2011 onwards his wages were being paid by M/s. Premsons Bazaar. The Petitioner, by its letter dated 08 February 2016, denied the allegations made by the Respondent and reiterated that the Respondent's services had never been terminated. It was asserted that the Respondent had voluntarily remained absent from duty since 14 April 2015. The Respondent, however, refuted this position by his reply dated 09 February 2016 and reiterated his demand for reinstatement in service. The Petitioner thereafter filed its reply to the Justification Statement on 23 May 2016 reiterating that the Respondent had voluntarily absented himself from duty.

4. The Petitioner submits that the Conciliation Officer, without proper application of mind and without undertaking the investigation contemplated under the Industrial Disputes Act, issued a Failure Report dated 30 August 2016. On the basis of the said report, the appropriate Government by order dated 22 February 2017 referred the alleged industrial dispute for

adjudication to the Labour Court under Section 12(5) of the Industrial Disputes Act. Pursuant thereto, the Respondent filed his Statement of Claim before the Labour Court on 19 September 2017, wherein he again admitted that his wages were paid by Premsons Bazaar. The Petitioner thereafter filed its Written Statement dated 24 October 2017 before the Labour Court denying the allegations made in the Statement of Claim. The Petitioner reiterated that the Respondent had voluntarily remained absent from duty since 14 April 2015 and that his services were never terminated. During the course of evidence, the Respondent filed an Affidavit in Lieu of Evidence. In his cross examination he admitted that he was employed by Premsons Bazaar and relied upon Form-16 which reflected Premsons Bazaar as his employer. The Petitioner subsequently led evidence through its witness, who was cross examined in the year 2023. During such cross examination it was stated that the Respondent had at all times been permitted to resume duties, since his services had never been terminated by the management. The Respondent also placed on record Form-16 issued by Premsons Bazaar dated 22 March 2022. Thereafter, the Petitioner filed an application dated 23 January 2024 seeking to place on record various correspondences exchanged between the parties.

5. Thereafter, by letter dated 17 February 2024, the Respondent once again alleged that his services had been illegally terminated. The Petitioner by its letter dated 20 February 2024 informed the Respondent that the management had decided to permanently close its operations pursuant to a notice dated 21 December 2022

issued under Section 25-FFA of the Industrial Disputes Act and therefore directed him not to report for duty. The Petitioner also placed on record several correspondences to demonstrate that the Respondent had been permitted to resume duties but had failed to do so. It is further the case of the Petitioner that the Respondent reported at the premises on 22 January 2024. However, according to the Petitioner, he created disturbance at the establishment and thereafter left the premises within a short time. The Respondent thereafter addressed further communications seeking leave and alleging that he was not permitted to resume duties. The Petitioner denied these allegations and also issued a warning memorandum dated 27 February 2024 on account of the Respondent's unauthorized absence. The 8th Labour Court at Mumbai, upon hearing the parties in Reference (IDA) No. 74 of 2017, passed the Award dated 29 April 2024 partly allowing the reference and directing the Petitioner to reinstate the Respondent with continuity of service and to pay 60% back wages with effect from 17 August 2015. The Petitioner states that even thereafter the Respondent continued to raise frivolous disputes and remained irregular in attending duties. Being aggrieved by the said Award dated 29 April 2024 passed by the 8th Labour Court at Mumbai, the Petitioner has filed the present Petition before this Court.

6. The learned Advocate appearing on behalf of the Petitioner submitted that the appropriate Government, namely the Government Labour Officer, ought to have conducted a proper inquiry and applied its mind to the allegations made by the Respondent workman before referring the dispute for adjudication.

It was contended that by letter dated 08 February 2016 the Petitioner had specifically denied the allegation that the services of the Respondent were terminated and had clearly asserted that the Respondent had remained absent from duty of his own accord. In these circumstances, it was submitted that the appropriate Government was required to verify the nature of the allegations and undertake a preliminary scrutiny before making a reference. According to the Petitioner, the reference was made mechanically without due consideration of the material placed on record. It was further submitted that the appropriate Government failed to take note of the fact that the Respondent himself had admitted that his wages were being paid by M/s. Premsons Bazaar and not by the present Petitioner Company. According to the Petitioner, this admission clearly indicates that there was no employer and employee relationship between the Petitioner and the Respondent. On this basis it was argued that the reference of the dispute against the Petitioner was erroneous and contrary to law. The learned Advocate submitted that when there was no material showing termination of service and when the Respondent had admittedly remained absent from duty, the reference itself ought not to have been made.

7. The learned Advocate further submitted that the appropriate Government ought to have considered that Premsons Bazaar and Premson Trading Pvt. Ltd. are separate and distinct legal entities. It was argued that if any dispute existed, it ought to have been referred against Premsons Bazaar, which according to the Respondent's own case was paying his salary. Attention was invited

to paragraphs 2, 3 and 4 of the Justification Statement filed by the Respondent before the Conciliation Officer, wherein the Respondent had clearly admitted that his salary was being paid by Premsons Bazaar and not by the Petitioner Company. It was therefore submitted that the Labour Court failed to appreciate that the Petitioner had never terminated the services of the Respondent with effect from 17 August 2015 and that the Respondent had voluntarily remained absent from duty from 14 April 2015 despite several communications calling upon him to resume duties. It was also contended that the learned Labour Court failed to properly appreciate the evidence led on behalf of the Petitioner. In particular, reliance was placed upon the cross examination of the Petitioner's witness dated 09 January 2024 wherein it was categorically stated that the Respondent was permitted to resume his duties. It was further submitted that the Petitioner had called upon the Respondent to report for duty by letters dated 10 January 2024 and 12 January 2024. However, according to the Petitioner, the Respondent did not comply with the said communications and instead proceeded to make unfounded allegations against the Petitioner. The learned Advocate further argued that although Premsons Bazaar may be described as a sister concern of Premson Trading Pvt. Ltd., both establishments are separate and independent legal entities. On this basis it was submitted that the reference made against the Petitioner Company itself was not maintainable in law and that the Labour Court ought to have dismissed the reference on this ground alone.

8. In support of the aforesaid submissions, reliance was placed on several decisions, namely, *M/s. Purafil Engineer, Pune v. Shaikkh Anwar Abdul Rahman*, 1999 SCC OnLine Bom 876; *R.K. Kitchen Equipments, Mumbai v. Majid Yusuf Hurape & Ors.*, 2003 SCC OnLine Bom 1245; *Competition Printing Press, Mumbai v. Shri Jaiprakash Singh & Anr.*, 2002 (1) L.L.N. 727; *Sonal Garments v. Trimbak Shankar Karve*, 2003 (1) L.L.N. 91; *Raju Shankar Poojary v. Chembur Warehouse Company & Anr.*, 2003 (4) L.L.N. 616; *Suja Agencies v. Uday Singh B. Rawat & Anr.*, 2003 (4) L.L.N. 1218; *Milestone (Franki Stall), Mumbai v. Mathew D'souza & Anr.*, 2010 (6) Mh.L.J. 796; *Vilas Ganpati Patil v. Suyog Backwell Vasantdada Audyogik Vasahat, Sangli & Anr.*, 2018 (6) Mh.L.J.; *Extrusion Process Ltd. v. Rajendra A. Sav & Anr.*, 2004 (3) L.L.N. 996; *M/s. Zoom Communications Ltd. v. Sharad Dipchand Patil* (Writ Petition No.15687 of 2022 decided on 09 February 2024); and *Kanga & Co. v. State of Maharashtra & Ors.* (Writ Petition No.2451 of 2006 decided on 13 October 2006).

9. The learned Advocate appearing for the Respondent invited the attention of the Court to the documentary evidence placed on record and submitted that the same establishes the employment of the Respondent with the Petitioner. It was pointed out that the copy of Form-16 issued to the Respondent mentions his designation as Driver and reflects the name of the employer as Premsons Bazar. However, the witness examined on behalf of the Petitioner admitted in his evidence that Premsons Bazar is a sister concern of M/s. Premsons Trading Pvt. Ltd. It was further admitted that in certain circumstances the cashier of Premsons Bazar used to

make payment of salaries to the employees of the Petitioner Company. The learned Advocate also relied upon the Provident Fund receipt produced at Exhibit U-12, which according to the Respondent demonstrates that he was an employee of the Petitioner. On the basis of the oral and documentary evidence, it was therefore submitted that the Respondent was working in the establishment of the Petitioner as well as in its sister concern Premsons Bazar. It was further submitted that the Respondent had issued a demand notice dated 22 August 2015 to the Petitioner alleging illegal termination. According to the Respondent, no reply was given by the Petitioner to the said demand notice. The Respondent has also sought to establish that he had availed leave for a period of forty five days from 04 April 2015 to 29 May 2015. It was contended that after the said period of leave the Respondent reported for duty with the intention of resuming his work, however he was not permitted to do so by the Petitioner. The issuance of the demand notice dated 22 August 2015 was therefore relied upon to show that the Respondent was willing to resume his duties.

10. The learned Advocate for the Respondent further submitted that although the witness of the Petitioner expressed before the Court that the Respondent could resume his duties, the Respondent had in fact addressed several letters dated 10 January 2024, 18 January 2024, 22 January 2024 and 17 February 2024 stating that the management of the Petitioner was not permitting him to report for duty. These communications were relied upon to demonstrate that the Respondent had consistently shown readiness

to join work but was not allowed to do so by the management. It was further contended that the evidence on record shows that no show cause notice or charge sheet was ever issued to the Respondent by the Petitioner for the alleged unauthorized absenteeism. According to the Respondent, if the Petitioner was of the view that the Respondent had remained absent from duty without authorization, it was incumbent upon the Petitioner as the employer to initiate disciplinary proceedings by issuing an appropriate show cause notice or charge sheet. The failure of the Petitioner to initiate any such disciplinary action in relation to the alleged absenteeism was therefore relied upon to suggest that the Petitioner did not intend to permit the Respondent to resume his duties.

REASONS AND ANALYSIS:

11. This Court has carefully considered the rival submissions advanced on behalf of both sides and has also examined the material placed on record. When the entire controversy is viewed in a proper manner, the dispute really turns around two questions which require examination. The first question is whether the industrial dispute was properly and legally referred for adjudication against the Petitioner. The second question is whether the Labour Court was justified in directing reinstatement of the Respondent with continuity of service and payment of 60 percent back wages with effect from 17 August 2015.

12. The first objection raised by the Petitioner relates to the reference of the dispute itself. The Petitioner argues that the

appropriate Government referred the dispute for adjudication without conducting a proper preliminary inquiry. In this connection reliance is placed on the letter dated 08 February 2016 issued by the Petitioner in which the allegation of termination was clearly denied. In that letter it was specifically stated that the Respondent had voluntarily remained absent from work. The submission of the Petitioner is that once such a clear stand was taken, the Government ought to have examined the matter more carefully before making a reference.

13. There can be no dispute that before referring an industrial dispute under Section 12(5) of the Industrial Disputes Act the Government is expected to apply its mind to the material placed before it. The law does not contemplate a mechanical reference. The authority must at least look into the nature of the dispute and see whether there exists a industrial dispute requiring adjudication. However, the matter cannot be examined in a technical manner. The Government at that stage does not conduct a full trial. Its task is to see whether a dispute exists and whether the matter should be examined by the adjudicating authority. In the present case the record shows that the Respondent had filed a Justification Statement before the Conciliation Officer. In that statement the Respondent explained his grievance regarding termination of service. It is true that in the said statement the Respondent admitted that since the year 2011 his wages were being paid by Premsons Bazaar. The Conciliation Officer thereafter attempted conciliation between the parties. Since the dispute could not be resolved, a Failure Report dated 30 August 2016 was

submitted. On the basis of this report the appropriate Government referred the dispute to the Labour Court on 22 February 2017. This sequence of events indicates that the Government acted upon the materials which were available before the Conciliation Officer. Once conciliation proceedings fail and the material shows a dispute regarding termination of service, the Government is generally justified in making a reference so that the matter can be examined by the Labour Court in detail. The mere fact that the employer has denied termination in its reply cannot by itself conclude the matter. Such denial only raises a factual dispute which requires adjudication. Therefore, the argument that the reference itself was illegal cannot be readily accepted.

14. The next question concerns the identity of the employer. The Petitioner strongly contends that there was no employer and employee relationship between the Petitioner and the Respondent. According to the Petitioner, Premson Trading Pvt. Ltd. and Premsons Bazaar are two distinct legal entities. The Petitioner relies heavily upon the Form-16 document which shows Premsons Bazaar as the employer. It is also pointed out that the Respondent himself admitted that his wages were being paid by Premsons Bazaar. On the basis of these facts the Petitioner argues that the dispute ought not to have been directed against the Petitioner at all.

15. This argument cannot be brushed aside lightly. In law each company has a separate legal identity. Even if two concerns are related or belong to the same group, they are normally treated as independent establishments. Therefore, the mere fact that one

concern is a sister concern of another does not automatically make them a single employer. At the same time, the Court cannot ignore the surrounding circumstances and the practical manner in which the business was functioning. The evidence on record shows that there was some level of interconnection between the two establishments. The witness of the Petitioner himself admitted that Premsons Bazaar is a sister concern of the Petitioner company. He also admitted that in certain circumstances the cashier of Premsons Bazaar used to pay salaries of employees working in the Petitioner's establishment. This admission assumes importance because it shows that the financial and employment arrangements between the two concerns were not completely separate in practice. The Respondent has also relied upon the Provident Fund receipt produced at Exhibit U-12. Provident Fund records are generally maintained with reference to the establishment where the employee actually works. Such records therefore carry evidentiary value regarding the existence of employment. When this document is read together with the oral admissions made during cross examination and the Form-16 produced on record, a picture emerges that the Respondent was performing work connected with the common enterprise of the sister concerns.

16. In such situations the Court cannot look only at the formal label of the employer mentioned in one document. It must see the real substance of the relationship. If the work performed by the employee, the payment of salary and the control exercised over the employee indicate a common management structure, the Court may examine the matter beyond the strict corporate form. The

question always remains who was exercising real control over the employment of the workman. The Labour Court has examined these aspects in detail. It considered the documentary evidence and also the testimony of witnesses. On appreciation of this material the Labour Court reached the conclusion that the Respondent was working in connection with the establishment and that he had not been permitted to resume duty after his absence.

17. The Petitioner emphasises that the Respondent remained absent from 14 April 2015 to 29 May 2015. According to the Petitioner, this prolonged absence justified the management in treating him as having abandoned service. Absence from work is undoubtedly a relevant circumstance. However, absence by itself does not automatically result in termination of employment. Normally, when an employee remains absent without authorization, the employer initiates disciplinary proceedings. A show cause notice is issued and the employee is asked to explain the absence. If the explanation is unsatisfactory, appropriate disciplinary action follows. In the present case the record does not show that any such disciplinary proceedings were initiated at the relevant time. No show cause notice or charge sheet was issued in the year 2015 alleging misconduct on account of unauthorized absence. This aspect assumes importance. If the management truly believed that the Respondent had abandoned service, it would have been expected to record such abandonment through a proper disciplinary process. The absence of such action creates doubt regarding the stand now taken by the Petitioner. It is also significant that after the period of absence the Respondent issued a

demand notice dated 22 August 2015 alleging illegal termination and seeking reinstatement. Thereafter he pursued the matter before the Conciliation Officer by filing a Justification Statement. These steps indicate that the Respondent was asserting his right to continue in employment. They do not suggest a situation where the employee had willingly abandoned service.

18. The Petitioner further relies upon certain letters issued in January 2024 inviting the Respondent to resume duties. The Petitioner refers to communications dated 10 January 2024 and 12 January 2024 and also to a warning memorandum dated 27 February 2024. According to the Petitioner, these documents show that the management was always ready to take the Respondent back in service. The Respondent, however, has produced his own letters dated 10 January 2024, 18 January 2024, 22 January 2024 and 17 February 2024 in which he complained that the management was not permitting him to report for duty. These conflicting versions were placed before the Labour Court. Such matters essentially involve appreciation of evidence and assessment of credibility of the parties. The Labour Court, which had the opportunity to examine the witnesses and documents in detail, was better placed to evaluate these facts.

19. The jurisdiction of this Court under Article 227 of the Constitution is supervisory in nature. This Court does not sit as an appellate authority over the findings of the Labour Court. Interference is justified only when the findings are perverse, or when relevant evidence has been ignored, or when the decision suffers from serious legal error. If the Labour Court has considered

the evidence and reached a possible conclusion, the High Court normally does not substitute its own view.

20. In the present case, the Labour Court examined the Form-16, the Provident Fund document, the correspondence exchanged between the parties and the admissions made during cross examination. It also noticed that no disciplinary proceedings were initiated against the Respondent for alleged unauthorized absence. After considering these circumstances the Labour Court concluded that the Respondent had been unjustly kept out of employment and therefore deserved reinstatement with continuity of service.

21. The Petitioner has also argued that the Failure Report submitted by the Conciliation Officer was issued without adequate inquiry. Even if this argument is considered, it does not materially affect the final outcome. The Conciliation Officer had before him the Justification Statement of the Respondent and the replies of the Petitioner. After conciliation failed he submitted the Failure Report. Once the dispute was referred, the Labour Court independently examined the entire matter and recorded its findings based on evidence. Therefore, the dispute cannot now be rejected merely on the ground that the preliminary inquiry was not elaborate.

22. Finally, the question of back wages requires consideration. The Labour Court has granted only 60 percent back wages from 17 August 2015. This shows that the Labour Court attempted to strike a balance between the rights of the workman and the circumstances of the case. The Court appears to have taken into

account that the Respondent had remained absent for a certain period and that the entire situation was not free from controversy. At the same time it recognised that the Respondent had been deprived of employment for a long period. The adjudicating authority has discretion to mould the relief depending upon the facts of each case. By awarding only 60 percent back wages the Labour Court appears to have exercised such discretion in a reasonable manner. This Court does not find the amount to be excessive or arbitrary. Moreover, Respondent has not filed separate petition challenging refusal to grant balance 40% back wages.

23. For all these reasons, the findings recorded by the Labour Court cannot be said to be unreasonable or unsupported by evidence. The conclusions reached by the Labour Court are based on appreciation of the material available on record. Therefore, no ground is made out for interference with the Award in exercise of supervisory jurisdiction.

24. In view of the foregoing discussion and the reasons recorded hereinabove, the following order is passed.

- (i) The Writ Petition fails and is accordingly dismissed;
- (ii) The Award dated 29 April 2024 passed by the 8th Labour Court at Mumbai in Reference (IDA) No. 74 of 2017 is upheld;
- (iii) The Petitioner shall comply with the said Award and implement the directions contained therein. The Respondent shall be reinstated in service with continuity and shall be paid 60 percent of the back wages with effect from 17

August 2015, as directed by the Labour Court;

(iv) The Petitioner shall calculate the amount of back wages payable to the Respondent and pay the same within a period of twelve weeks from the date of this order. In the event the amount is not paid within the stipulated period, it shall carry interest at the rate of 9 percent per annum from the date it became payable until realization;

25. Rule stands discharged. In the circumstances of the case, there shall be no order as to costs.

(AMIT BORKAR, J.)