

Shabnoor

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

WRIT PETITION NO.150 OF 2026

SHABNOOR
AYUB
PATHAN

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Sanjay Shivram Chirmure

Aged 54 years, Indian Inhabitant,
Having Residential Address at:
Flat No.102, Shiv Bhoomi SRA,
Building No.7, Shankarwadi,
Jogeshwari (East), Mumbai – 400 060.

... Petitioner

V/s.

1. ICC Worldwide Pvt. Ltd.

A Private Limited Company Incorporated
Under the Companies Act, 1956,
Having Registered Address at:
Lotus House, Andheri – Kurla Road
Sakinaka, Andheri (East),
Mumbai – 400072.

2. Gopal S. Revankar

**Managing Director of M/s. ICC Worldwide
Pvt. Ltd.**
Having Office Address at:
Lotus House, Andheri – Kurla Road
Sakinaka, Andheri (East),
Mumbai – 400072.

3. Chandrashekhar

**General Manager of M/s. ICC Worldwide
Pvt. Ltd.**
Having Office Address at:
Lotus House, Andheri – Kurla Road
Sakinaka, Andheri (East),
Mumbai – 400072.

4. Ashok Dawar

**Accounts Manager of M/s. ICC Worldwide
Pvt. Ltd.**
Having Office Address at:

Lotus House, Andheri – Kurla Road
Sakinaka, Andheri (East),
Mumbai – 400072.

... Respondents

Mr. Ameya Vaidya a/w Mr. Yaksha Mandot i/b Mr.
Navkar Jain, for the Petitioner.

Mr. G. R. Naik with Mr. Uresh U. Sawant, and Ms.
Rutika Naik i/b G. R. Naik & Co., for Respondents.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 30, 2026

PRONOUNCED ON : MAY 7, 2026

JUDGMENT:

1. By the present Petition, the Petitioner has invoked the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking issuance of an appropriate writ in the nature of Certiorari for quashing and setting aside the order dated 17 March 2025 passed by the Learned Industrial Tribunal. By the said order, the Tribunal has confirmed and upheld the order dated 18 April 2024 rendered by the Learned Labour Court, whereby the claim of the Petitioner for grant of back wages and consequential service benefits for the period extending from March 2020 to December 2023 came to be rejected.

2. The facts giving rise to the present Petition, in brief, are that the Petitioner, who was the original Complainant, had instituted a Complaint before the Learned Labour Court under Section 28 read with Item 1(a) and (b) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour

Practices Act, 1971. The Petitioner had also preferred a Revision Application under Section 44 of the said Act impugning the order dated 18 April 2024, by which the Learned Labour Court partly allowed the Complaint and directed reinstatement of the Petitioner with continuity of service from 23 March 2020, however without awarding back wages. For the sake of convenience and clarity, the parties are hereinafter referred to in their original capacity before the Labour Court.

3. It is the case of the Petitioner that he was in continuous employment with Respondent No.1 Company from 01 February 1998, serving in the capacity of a Delivery Boy, and that he had rendered long, uninterrupted and satisfactory service. His last drawn wages were stated to be Rs.17,200/- per month inclusive of allowances and other admissible benefits. Respondent Nos. 2 to 4, namely the Managing Director, General Manager and Accounts Manager, respectively, were stated to be in charge of and responsible for the conduct of the business and day-to-day affairs of Respondent No.1 Company. The Respondent Company is engaged in the business of domestic as well as international courier services, operating through multiple branches across the country and employing more than 55 permanent employees.

4. The Petitioner contends that the Respondents failed to extend statutory benefits as required under the applicable labour legislations. It is further his case that upon raising grievances concerning his service conditions and entitlement to such benefits, he was subjected to threats of termination. During the nationwide lockdown imposed on account of the COVID-19 pandemic with

effect from 23 March 2020, the operations of the Respondent Company came to a temporary halt. Notwithstanding specific directives issued by the Ministry of Home Affairs and the Government of Maharashtra mandating payment of full wages during the lockdown period, the Respondents allegedly failed to pay the Petitioner his due salary.

5. It is further the case of the Petitioner that upon gradual relaxation of lockdown restrictions, the Respondent Company resumed its operations in or about the first week of July 2020. However, despite repeated requests and personal visits made by the Petitioner to Respondent Nos. 3 and 4, he was deliberately not permitted to resume his duties. According to the Petitioner, he continued to pursue the matter and in or about January 2022, when he once again approached the Respondents seeking reinstatement, he was orally informed that his services were no longer required. Such action, according to the Petitioner, amounted to termination in violation of due process of law. The Petitioner thereafter addressed a letter dated 17 February 2022 calling upon the Respondents to reinstate him with continuity of service and full back wages; however, no reply was forthcoming from the Respondents.

6. The Petitioner asserts that he had maintained an unblemished record of service and had completed more than 240 days of continuous service in each calendar year. It is his case that no charge-sheet was ever issued to him nor was any disciplinary proceeding initiated. Since 23 March 2020, the Petitioner claims to have remained unemployed and unable to secure alternative

employment, inter alia on account of the failure of the Respondents to issue a service certificate. The Petitioner further states that being the sole earning member of his family, he has suffered considerable financial hardship.

7. The Petitioner further contends that he has not been paid his legitimate dues, including gratuity, encashment of earned leave, bonus, notice pay and retrenchment compensation. According to the Petitioner, the termination of his services is arbitrary, illegal and constitutes victimisation, thereby amounting to an unfair labour practice within the meaning of Item 1(a) and (b) of Schedule IV of the MRTU & PULP Act.

8. It is also the contention of the Petitioner that in view of the order dated 23 March 2020 passed by the Supreme Court extending the period of limitation with effect from 15 March 2020 till 28 February 2022, the proceedings initiated by him were within the prescribed period of limitation. Upon issuance of notice, the Respondents appeared before the Learned Labour Court and filed their Written Statement, contending inter alia that the Complaint was false and vexatious and barred by limitation, having been filed on 10 May 2022 beyond the prescribed period, and that no application for condonation of delay had been filed.

9. The Respondents further raised a preliminary objection to the maintainability of the Complaint on the ground that the nature of their business pertains to international air courier services and, therefore, the appropriate Government would be the Central Government, thereby excluding the jurisdiction of the Labour

Court under the MRTU & PULP Act.

10. It was further contended by the Respondents that due to the suspension of international flight operations from 23 March 2020 till March 2022, the business activities of the Respondent Company were severely affected and remained substantially closed during the said period. Consequently, there was no requirement for delivery personnel and no new employees were appointed in place of the Petitioner.

11. The Respondents have further submitted that on account of the pandemic, they lost major clients including FedEx, UPS and DHL, which adversely impacted their financial position. Upon receipt of the Petitioner's letter dated 17 February 2022, meetings were held on 1 March 2022 and 1 April 2022, wherein the financial condition of the Company was explained to the employees. While two other delivery employees accepted full and final settlement, the Petitioner declined to accept such settlement.

12. The Respondents have also contended that the Petitioner did not report for work from 23 March 2020 till 20 January 2022, allegedly on account of awaiting vaccination, and therefore, according to them, he is not entitled to claim reinstatement or back wages. Being aggrieved by the impugned orders, particularly to the extent of denial of back wages despite grant of reinstatement with continuity of service, the Petitioner has approached this Court by way of the present Petition.

13. The Learned Advocate appearing for the Petitioner submits that both the Learned Labour Court as well as the Learned

Industrial Court have denied the relief of back wages primarily on the ground that the Petitioner had allegedly not made any effort to secure alternative employment. It is urged that such a finding is unsustainable in the facts of the present case. The Petitioner is stated to be an unskilled workman who had been discharging duties of delivery for the Respondents continuously for more than 22 years. Having regard to the nature of his work and his limited skill set, it is submitted that the avenues for securing alternative employment were inherently narrow and restricted.

14. It is further submitted that the cessation of the Petitioner's employment occurred during a period when the entire country was passing through an unprecedented crisis on account of the COVID-19 pandemic. During such period, not only the economic activities were severely curtailed, but the very possibility of obtaining alternative employment stood substantially diminished. In these circumstances, it is contended that the Petitioner cannot be faulted for not securing gainful employment during the relevant period.

15. The Petitioner further contends that for the purpose of seeking alternative employment, it was necessary for him to obtain a formal termination letter and a service certificate indicating his tenure and nature of duties with the Respondents. According to the Petitioner, repeated requests were made to the Respondents for issuance of such documents; however, the Respondents failed and neglected to provide the same. It is submitted that in absence of these essential documents, the prospects of securing alternate employment were seriously prejudiced. This material aspect, according to the Petitioner, has not been duly considered by the

Learned Industrial Court while passing the impugned judgment dated 17 March 2025.

16. The Learned Industrial Court has also denied the relief of back wages on the premise that the Petitioner had allegedly not made any effort to resume employment with the Respondents. The Petitioner disputes this finding and submits that the same is contrary to the material available on record. It is his case that during the pandemic period, he had made several oral requests to the Respondents seeking reinstatement in service.

17. It is further submitted that the Petitioner addressed a written communication dated 17 February 2022 to the Respondents, calling upon them either to permit him to resume his duties or to issue a formal order of termination. The said communication was made at a stage when the lockdown restrictions were being gradually relaxed. However, the Respondents did not respond to the said communication. Thereafter, on 10 May 2022, the Petitioner instituted a Complaint before the Learned Labour Court alleging commission of unfair labour practices and seeking reinstatement with continuity of service. The Petitioner had also filed an Interim Application seeking a direction to the Respondents to permit him to resume duties pending final adjudication of the Complaint.

18. In view of the aforesaid circumstances, it is submitted that the finding recorded by the Learned Industrial Court to the effect that the Petitioner had made no effort to resume employment is unsustainable. On the contrary, the conduct of the Petitioner, as

reflected from the communication dated 17 February 2022 and the initiation of legal proceedings on 10 May 2022, demonstrates his continuous readiness and willingness to resume service with Respondent No.1, where he had rendered long and uninterrupted service of more than 22 years. It is, therefore, prayed that the Petitioner be granted back wages along with all consequential benefits in the interest of justice.

19. Per contra, the Learned Advocate appearing on behalf of the Respondents submits that no charge-sheet was issued to the Petitioner, nor was any departmental inquiry or show cause notice initiated against him. It is further contended that there was, in fact, no termination of the Petitioner's service. Reliance is placed on the attendance records, which according to the Respondents, indicate that the Petitioner had continued to work even after 23 March 2020. It is, therefore, submitted that the alleged cause of action premised on termination is misconceived, and consequently, the claim for benefits arising out of termination does not arise in law.

20. It is further submitted that it is not in serious dispute that certain amounts towards full and final settlement were paid to similarly situated co-workers of the Petitioner on 29 April 2022. From the evidence on record, including the cross-examination of witnesses namely Chandrasekharan Kunju Cherimal, Rajesh Rahate, and Prabhakar Malekar, it is sought to be demonstrated that the said employees had addressed communications to the Company seeking allotment of work and payment of wages. The record further indicates that after 23 March 2020, the Respondents

neither issued any show cause notice to the Petitioner nor called upon him to resume duties or to explain any alleged absence.

21. It is also submitted that other co-workers of the Petitioner have settled their claims by accepting full and final settlement amounts and have thereafter ceased to be in employment of the Respondents. According to the Respondents, this conduct indicates that the cessation of employment was mutually resolved in several cases.

22. It is further submitted that the Petitioner was called upon to report for duty on 08 January 2024, and reliance is placed on the attendance registers for the period from 26 December 2023 to 15 January 2024, which according to the Respondents, demonstrate that the Petitioner did report for duty on 08 January 2024 and continued to perform duties thereafter. However, it is contended that such isolated instance, viewed in the overall facts and circumstances, cannot lead to a conclusion that there was no termination of service.

23. It is further submitted that during the relevant period, a nationwide lockdown had been imposed by the Central Government with effect from 23 March 2020, and it is an admitted position that the Petitioner did not work during the said period. The Respondents have also placed on record documents relating to the working pattern of the Petitioner, which according to them indicate that the Petitioner remained absent during the COVID-19 period till 01 April 2023.

24. It is contended that there is no documentary material on record to establish that the Petitioner had made any bona fide effort either to resume duties after the COVID-19 period or to secure alternative employment. In absence of any work performed or proof of efforts towards mitigation, the Petitioner, according to the Respondents, is not entitled to claim back wages or any special allowances. On these grounds, it is prayed that the present Petition be dismissed.

25. I have given careful and anxious consideration to the rival submissions advanced by both sides, and also perused the material placed on record along with the legal position governing the issue of back wages.

26. In so far as the question of grant of back wages is concerned, the legal position is no longer *res integra* and stands authoritatively settled by the decision of the Hon'ble Supreme Court in *Maharashtra SRTC v. Mahadeo Krishna Naik*, (2025) 4 SCC 321. The Court, after considering the earlier binding precedents, has reiterated that though reinstatement with back wages is a well-recognised consequence of illegal termination, the grant of back wages is must be preceded by a limited factual inquiry. The Supreme Court has referred to the principle beginning from *Hindustan Tin Works (P) Ltd. v. Employees*, (1979) 2 SCC 80 wherein it was held that once termination is found to be illegal, reinstatement with continuity ordinarily carries with it the entitlement to full back wages, since the employer, by wrongful act, has deprived the workman of employment and livelihood. The Court emphasized that denial of back wages in such circumstances

would amount to penalising the workman for no fault attributable to him and would benefit the employer.

27. This principle was again reinforced in *Surendra Kumar Verma v. Labour Commr.*, (1980) 4 SCC 443, where it was observed that in matters arising out of welfare legislation, a purposive approach is required to be adopted. The Court held that once an order of termination is set aside, the natural consequence would be reinstatement with back wages, subject, however, to exceptional circumstances where grant of full back wages would be inequitable or impracticable.

28. The principle was thereafter comprehensively examined in *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, (2013) 10 SCC 324 wherein the Supreme Court crystallised the governing principles. It was held that reinstatement with continuity of service and back wages constitutes the normal rule in cases of wrongful termination. However, the adjudicating authority retains discretion to mould the relief having regard to relevant factors such as the nature of misconduct, length of service, financial condition of the employer, and other attendant circumstances. Importantly, the burden of proof was clarified. Once the employee asserts that he was not gainfully employed, the onus shifts upon the employer to plead and prove, by cogent evidence, that the employee was gainfully employed and earning wages.

29. In the aforesaid decision of *Mahadeo Krishna Naik*, the Supreme Court has considered the earlier judgments and held that the grant of full or partial back wages lies within the discretion of

the Court, to be exercised upon a consideration of whether the employee was gainfully employed during relevant period. The Court has clarified that such determination requires a limited fact-finding exercise. If the employee pleads non-employment, it would be unreasonable to expect proof of a negative fact, and in absence of contrary material, such assertion deserves acceptance. If, however, the employer seeks to avoid liability, the burden lies upon the employer to establish gainful employment of the employee during the relevant period.

30. The Court has further reiterated that where termination is found to be illegal, the employer cannot be permitted to escape the consequences. The principle underlying the grant of back wages is that the employee was always ready and willing to work, but was prevented from doing so by the unlawful act of the employer. Therefore, unless exceptional circumstances are demonstrated, denial of back wages would amount to rewarding the employer for its wrongful conduct. At the same time, the Supreme Court has recognised that the relief is not inflexible. In appropriate cases the Court may award partial back wages or even grant lump sum compensation in lieu of reinstatement and back wages, where such course is found to be more just. Applying the aforesaid principles, the Supreme Court in the said case, upon noticing that the employee had undertaken only intermittent daily wage work and there was no clear evidence of substantial gainful employment, modified the award of full back wages and restricted the same to 75 percent.

31. Turning to the facts, the Petitioner is an unskilled workman. He has been working as a Delivery Boy with the Respondent Company for more than 22 years. This length and nature of service shows that the Petitioner had spent a substantial part of his life in one establishment, performing duties which are routine in character. A Delivery Boy is engaged in field duties. The experience gained may not open doors in other sectors. Therefore, it would not be realistic to expect that upon being out of service, the Petitioner could have secured employment with similar wages. This aspect assumes importance because the denial of back wages by the courts below appears to proceed on an assumption that the Petitioner ought to have demonstrated efforts to secure employment. The Petitioner's submission that his chances of obtaining employment were limited has merit. To insist upon proof of unemployment would be placing an unreasonable burden. The surrounding facts and the nature of employment must be taken into account. In that view, the reasoning adopted by the courts below appears to be not aligned with settled principles.

32. Further, the period under consideration falls within the time when the country was facing the COVID 19 pandemic. This circumstance has a bearing on the issue. During this period, economic activity was disrupted. Many establishments either shut down or functioned at lower capacity. In such an situation, the ability of an unskilled worker to secure alternative employment was diminished.

33. The Petitioner has stated that he remained unemployed during this time. The absence of documentary proof of such

unemployment cannot be treated as fatal to his claim. Therefore, when the factual position is seen along with the conditions during the pandemic and the nature of the Petitioner's work, the conclusion drawn by the courts below in denying back wages on the ground of absence of proof of unemployment does not appear to be justified.

34. The Petitioner has asserted that he made attempts to approach the Respondents for permitting him to resume his duties and also for issuance of necessary documents such as service certificate and termination letter. In ordinary course, a workman who is compelled to seek employment is required to demonstrate his previous service record. A certificate and a termination letter serve as proof of employment and reason for discontinuance. Without such documents, a workman is placed in a position of difficulty, and his chances of securing employment are affected. The record shows that the Petitioner addressed a communication dated 17 February 2022. By that letter, he called upon the Respondents either to permit him to resume duties or to issue a order of termination. It shows that he was willing to work and was not abandoning his employment. The Respondents chose not to reply to this communication. Such silence indicates a lack of response to a legitimate demand. Thereafter, within a reasonable period, the Petitioner approached the Labour Court on 10 May 2022. This sequence of events shows that the Petitioner was pursuing his employment. Therefore, the conclusion drawn by the Industrial Court that the Petitioner made no effort to resume work appears to be too general.

35. The contention of the Respondents that there was no termination, on the ground that no charge-sheet was issued and no inquiry or show cause notice was conducted, also requires careful scrutiny. In industrial law, the absence of disciplinary action does not automatically lead to the inference that the employment relationship continued without interruption. The Act examines the nature of the situation. If a workman is not permitted to perform duties, the absence of documentation cannot cure such defect. The Petitioner has stated that he was orally informed that his services were not required. Such oral communication cannot be ignored if it is supported by surrounding circumstances.

36. On the other hand, the Respondents have not placed on record material to show that the Petitioner was taken back into service or that he had abandoned his duties. The attendance records relied upon by the Respondents are limited and do not establish an employment during the relevant period. Such documents are insufficient to displace the case put forth by the Petitioner. Therefore, the plea that there was no termination does not advance the case of the Respondents.

37. The Respondents have also sought to rely upon the fact that certain co-workers accepted full and final settlement and ceased employment. This fact does not conclude the issue against the Petitioner. Each employee stands on his own footing. The acceptance of settlement by other workmen may indicate their individual choice, but it cannot bind the Petitioner.

38. Similarly, the Respondents have referred to financial difficulties faced during the pandemic, including loss of clients and reduction in business. This circumstance may explain the constraints under which the Respondents were operating. However, financial hardship, by itself, cannot justify an action which is otherwise contrary to law. The inability of the employer to carry on business does not authorise denial of wages. At the highest, such factor may be relevant while moulding the extent of relief.

39. It is correct that the Respondents have argued that the Petitioner failed to prove that he remained unemployed and that he did not take steps to mitigate his loss. Such contention is not without legal basis. The employer, who seeks to avoid payment of back wages, must produce some material to show that the workman was gainfully employed elsewhere. A mere assertion cannot be treated as proof. In the present case, no such evidence has been brought on record by the Respondents.

40. The Petitioner has maintained that he had no employment. This statement has not been rebutted. There is no material to show that he was earning wages. In absence of such evidence, it would not be appropriate to deny back wages. The normal rule, therefore, cannot be departed.

41. The fact that the Petitioner reported for duty on 08 January 2024 is also pressed into service by the Respondents. This circumstance has limited relevance. At the most, it may indicate that the employment relationship was not severed at all times. But

the issue is whether the Petitioner was deprived of work and wages for a period prior to that date. A single instance of reporting for duty after a long interval does not erase the effect of prolonged exclusion from work. The Court must examine the entire period. On such examination, the record appears to support the case of the Petitioner rather than that of the Respondents.

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

- (i) The Petition succeeds in part;
- (ii) The impugned order dated 17 March 2025 passed by the Learned Industrial Tribunal, insofar as it affirms denial of back wages, and the order dated 18 April 2024 passed by the Learned Labour Court to that extent, are quashed and set aside;
- (iii) It is declared that the Petitioner shall be entitled to back wages for the period from March 2020 till December 2023, along with all consequential service benefits arising out of reinstatement with continuity of service;
- (iv) The Respondents are directed to compute and pay the amount of back wages and consequential benefits payable to the Petitioner within a period of twelve weeks from the date of this order;
- (v) In the event of failure to pay the said amount within the stipulated period, the same shall carry interest at the rate of 6 percent per annum from the date it became due till

realization;

(vi) Rule is made absolute in the aforesaid terms. No order as to costs.

43. Pending interlocutory application(s), if any, stands disposed of.

(AMIT BORKAR, J.)