

Shabnoor

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

WRIT PETITION NO.6541 OF 2025

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Sachin Balasaheb Gade,

Age 41 years, Occupation Unemployed,

R/o. Kasarboli, Post Ambadwet,

Taluka Mulshi, District Pune 412 115

... Petitioner

Vs.

J.M.D. Engineer Perforations and

Automobile Filter, Gat No.399-3A,

VIII, Bhare, Post Ghotawade,

Taluka Mulshi, Pirangut,

District Pune 412 115

... Respondent

Mr. V.N. Jadhav for the petitioner.

Mr. Shrivallabh S. Panchpor with Mr. Parmeshwar Andil
for the respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : MAY 7, 2026.

PRONOUNCED ON : MAY 8, 2026

JUDGMENT:

1. By the present Writ Petition instituted under Articles 226 and 227 of the Constitution of India, the Petitioner has assailed the Award dated 1 October 2024 rendered by the learned Labour Court, Pune in Reference (IDA) No.453 of 2020.

2. The facts giving rise to the present Petition, in brief, are that the Respondent is an engineering industry registered under the provisions of the Factories Act, 1948, and is employing more than 58 workmen in its establishment. It is, therefore, the case of the Petitioner that the Model Standing Orders are squarely applicable to the Respondent establishment and the service conditions of the workmen employed therein are governed accordingly. The Petitioner states that he is educated up to the degree of Bachelor of Arts (B.A.) and does not possess any technical qualification in engineering or business management. According to the Petitioner, he joined the services of the Respondent establishment in the year 2012 and was orally designated as an "Assistant Supervisor". It is his specific contention that no appointment letter was ever issued by the Respondent at any point of time. The Petitioner further asserts that he was lastly drawing monthly wages of Rs.16,500/-. It is alleged that the Respondent failed to issue salary slips, did not maintain proper muster rolls, and also failed to pay overtime wages in accordance with the statutory requirements. The Petitioner claims that he had continuously and uninterruptedly worked with the Respondent establishment for a period of approximately eight years and had thereby acquired the status of a permanent workman under law.

3. It is the case of the Petitioner that during the period of the COVID-19 pandemic, the Respondent establishment had temporarily suspended its operations for a certain duration. However, upon resumption of industrial activities in or about May 2020, all workmen except the present Petitioner were allegedly

permitted to resume their duties. According to the Petitioner, he had persistently demanded payment of overtime wages at double the prescribed rate and had also insisted upon compliance with statutory obligations under the labour laws, which allegedly caused displeasure to the management of the Respondent establishment. It is further alleged that, on account thereof, the Respondent through its Manager, namely Mr. Shyamsingh Kohli, refused to permit the Petitioner to report for duties and orally terminated his services with effect from 17 May 2020 without assigning any reasons and without following the mandatory procedure contemplated under law.

4. Being aggrieved by the alleged illegal oral termination, the Petitioner, through his Advocate, addressed a demand notice dated 9 July 2020 to the Respondent calling upon it to reinstate him in service with full back wages and continuity of service. According to the Petitioner, the Respondent failed to respond to the said notice. Thereafter, the Petitioner raised an industrial dispute before the office of the Deputy Labour Commissioner, Pune by filing a complaint dated 25 August 2020 along with a demand letter dated 7 September 2020 seeking redressal of his grievance. The record further indicates that the Respondent appeared in the conciliation proceedings and filed its say dated 12 October 2020. However, despite participation in the conciliation proceedings, the Respondent declined to reinstate the Petitioner in service. Consequently, the Conciliation Officer submitted a failure report on 10 November 2020 under the provisions of the Industrial Disputes Act, 1947. Thereafter, by an order dated 24 November

2020, the Deputy Labour Commissioner, Pune referred the industrial dispute for adjudication to the learned Labour Court, Pune, where the same came to be registered as Reference (IDA) No.453 of 2020.

5. The Petitioner thereafter filed his Statement of Claim before the learned Labour Court setting out the factual and legal basis of his challenge to the alleged termination. Though duly served with the proceedings, the Respondent failed to file its Written Statement for a period of approximately 22 months. In view thereof, an order of “No Written Statement” came to be passed against the Respondent by the learned Labour Court. Subsequently, upon the Respondent seeking permission to place its defence on record, the learned Labour Court permitted filing of the Written Statement subject to payment of costs, pursuant to which the Respondent filed its Written Statement before the learned Labour Court.

6. Being aggrieved and dissatisfied with the Award dated 1 October 2024 passed by the learned Labour Court, Pune in Reference (IDA) No.453 of 2020, the Petitioner has preferred the present Writ Petition invoking the supervisory and extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

7. Mr. V. N. Jadhav, learned Advocate appearing on behalf of the Petitioner submitted that the Petitioner had caused to be issued an Advocate’s notice dated 9 July 2020 wherein a specific demand was raised contending that the services of the Petitioner had been orally terminated with effect from 17 May 2020. It was submitted

that the said assertion was consistently reiterated by the Petitioner in his Statement of Claim as well as in the Affidavit in lieu of examination-in-chief filed before the learned Labour Court, wherein the Petitioner had specifically pleaded that his services were brought to an end by the Respondent without following the mandatory procedure prescribed under law. Learned Advocate further submitted that during the course of cross-examination, the Petitioner had categorically deposed that he was orally terminated by Mr. Shyamsingh Kohli, who was serving as the Production Manager of the Respondent establishment. According to the learned Advocate, the aforesaid assertion regarding oral termination was never specifically denied by the Respondent at any stage of the proceedings. On the contrary, reliance was placed upon the reply submitted by the Respondent before the Conciliation Officer, wherein the Respondent itself stated that the Petitioner was insisting upon issuance of a “termination letter”, which, according to the Petitioner, amounted to an implied admission regarding the factum of termination. It was therefore contended that throughout the conciliation proceedings as well as during the adjudication before the learned Labour Court, the Respondent never seriously disputed the case of oral termination put forth by the Petitioner.

8. Learned Advocate for the Petitioner further submitted that the Respondent had failed to place on record any material whatsoever demonstrating compliance with the mandatory statutory provisions governing retrenchment under the Industrial Disputes Act, 1947. It was submitted that no order of termination,

notice, notice pay, retrenchment compensation, or any contemporaneous documentary record evidencing lawful discontinuation of service was produced before the learned Labour Court. In the absence of such material, according to the learned Advocate, it stood conclusively established that the services of the Petitioner had been orally terminated in complete breach of the statutory safeguards and settled principles governing retrenchment of a workman. It was therefore submitted that the Petitioner had successfully established before the learned Labour Court that he was illegally retrenched from service with effect from 17 May 2020.

9. It was further submitted on behalf of the Petitioner that during the conciliation proceedings, the Respondent had never raised any defence of abandonment of service or unauthorized absence against the Petitioner. Learned Advocate submitted that for the first time, in paragraph 6 of the Written Statement filed before the learned Labour Court, the Respondent sought to contend that after relaxation of the lockdown restrictions, the Petitioner had “found it convenient not to report for work.” According to the Petitioner, by advancing such a contention, the Respondent sought to set up a case of abandonment of service and/or misconduct against the Petitioner. It was submitted that even during the course of cross-examination, suggestions were put to the Petitioner alleging that he had voluntarily stopped reporting for duties. Learned Advocate submitted that once allegations relating to misconduct, absenteeism, or abandonment are levelled against a workman, the burden lies upon the employer to establish

the same by cogent and acceptable evidence and by conducting a proper domestic enquiry consistent with the principles of natural justice. It was submitted that admittedly no domestic enquiry whatsoever was conducted by the Respondent, nor was any opportunity of hearing afforded to the Petitioner before discontinuing his services. The Respondent, therefore, according to the Petitioner, failed to establish the alleged abandonment of service in the manner known to law.

10. Learned Advocate for the Petitioner further submitted that the findings recorded by the learned Labour Court on the issue of abandonment of service are perverse, contrary to the evidence available on record, and founded upon a clear misreading of the deposition of the Petitioner. It was submitted that during cross-examination, the Petitioner had merely admitted that owing to the COVID-19 pandemic, the factory remained closed for a limited duration during March 2020. However, the Petitioner had specifically denied the suggestion that the factory had remained continuously closed for a period of four months. Despite such categorical denial, the learned Labour Court, in paragraph 18 of the impugned Award, erroneously observed that the Petitioner had admitted closure of the establishment for four months and, on the basis thereof, proceeded to hold that there was no occasion for compliance with the provisions of Sections 2(oo) and 25F of the Industrial Disputes Act, 1947. According to the learned Advocate, the said findings are wholly unsustainable, being contrary to the evidence on record, and therefore liable to be quashed and set aside in exercise of writ jurisdiction.

11. Learned Advocate appearing for the Petitioner, further submitted that during the conciliation proceedings, the Petitioner had produced various documents, including notices and communications addressed to the Respondent calling upon it to reinstate the Petitioner in service. It was submitted that the said documents formed part of the record before the learned Labour Court. Learned Advocate contended that despite the aforesaid material and despite the consistent willingness demonstrated by the Petitioner to resume duties, the learned Labour Court failed to grant the relief of reinstatement together with consequential back wages. Inviting attention to the Affidavit in lieu of evidence filed by the Petitioner, learned Advocate submitted that in the prayer clause thereof, the Petitioner had specifically claimed wages for the period during which he remained unemployed. It was further submitted that in paragraph 7 of the affidavit, the Petitioner had referred to the legal notice dated 9 July 2020 issued through his Advocate, wherein it was specifically stated that the Petitioner remained unemployed during the relevant period. Learned Advocate therefore submitted that the averments contained in the affidavit as well as the recitals in the legal notice sufficiently satisfy the requirement of pleading and asserting that the Petitioner was not gainfully employed elsewhere during the period subsequent to termination of service.

12. In the aforesaid backdrop, the Petitioner has prayed that this Court be pleased to quash and set aside the Award dated 1 October 2024 passed by the learned Labour Court, Pune in Reference (IDA) No.453 of 2020, insofar as the same denies the reliefs of

reinstatement, continuity of service and back wages to the Petitioner, and further be pleased to direct reinstatement of the Petitioner in service with full back wages, continuity of service and all consequential benefits flowing therefrom.

13. Per contra, Mr. Panchpor, learned Advocate appearing on behalf of the Respondent employer submitted that the Respondent had specifically raised a defence in paragraph 6 of its Written Statement contending that after the lockdown period, the Petitioner failed to report for duties and thereafter falsely alleged termination from service. It was submitted that although the notice dated 9 July 2020 was referred to in the affidavit filed by the Petitioner, the said document was not duly proved in accordance with law and therefore could not be relied upon by the learned Labour Court. Learned Advocate further submitted that, in any event, the material available on record merely indicated dispatch of the said notice to the address of the Respondent and no satisfactory proof regarding actual service thereof had been produced. It was further submitted that the learned Labour Court had rightly relied upon the admissions elicited during the cross-examination of the Petitioner to conclude that the Respondent establishment had remained closed for approximately four months during the COVID-19 pandemic. On the basis of the said factual findings, the learned Labour Court rightly held that the provisions of Sections 2(oo) and 25F of the Industrial Disputes Act, 1947 were not attracted in the facts and circumstances of the present case.

14. In support of the aforesaid submissions, learned Advocate appearing for the Respondent placed reliance upon the judgment of this Court in *Vilas Ganpati Patil v. Suyog Backwell Vasantdada Audyogik Vasahat & Anr.* reported in 2018(6) Mh.L.J. 282, and submitted that in similar facts and circumstances this Court had upheld a finding of abandonment of service. On the strength of the said decision, it was urged that the present Petition being devoid of merit deserves to be dismissed.

REASONS AND ANALYSIS:

15. Having heard the learned Advocates appearing for the respective parties at considerable length, and having carefully perused the pleadings, documentary material, oral evidence and the impugned Award passed by the learned Labour Court

16. From the very beginning of the proceedings, the Petitioner has maintained one case, namely, that his services came to be orally terminated with effect from 17 May 2020. This stand appears first in the Advocate's notice dated 9 July 2020, thereafter in the Statement of Claim filed before the learned Labour Court, and again in the Affidavit in lieu of examination-in-chief tendered by the Petitioner. The consistency of this version assumes significance because at no stage did the Petitioner alter or improve his case. Even during the course of cross-examination, the Petitioner adhered to the same stand and categorically stated that he was orally discontinued from service by Mr. Shyamsingh Kohli, Production Manager of the Respondent establishment. Such statement has remained unshaken in the cross-examination.

Ordinarily, when a workman repeatedly asserts a fact at every stage commencing from the first available opportunity, and such assertion remains consistent, the same cannot be discarded because the termination was oral and not evidenced by documentation.

17. Another circumstance which assumes importance is that the Respondent did not deny the allegation of oral termination at the earliest point of time. Before the Conciliation Officer, the Respondent filed its say. In the said reply, reference was made to the fact that the Petitioner was insisting for issuance of a “termination letter”. In the considered opinion of this Court, such statement has some evidentiary value because it indirectly indicates that the relationship between the parties had already become severed or was at least being treated as discontinued by the management. Had there been no termination or cessation of employment, one would expect a assertion from the employer that the workman continued in service and was always free to resume duties. Such stand is absent in the initial reply filed by the Respondent. The omission on the part of the employer to specifically deny termination at the earliest available stage creates a circumstance which lends support to the version of the Petitioner. Therefore, when the record is read as a whole, the allegation regarding oral termination cannot be treated as a bald assertion unsupported by material.

18. The next question which arises for consideration is whether the Respondent has demonstrated that the cessation of service, assuming it had taken place, was in accordance with law. On this

aspect, the record before the Court is completely devoid of material from the side of the employer. No written termination order has been produced. No notice contemplated under the Industrial Disputes Act, 1947 has been shown. No material regarding payment of notice pay or retrenchment compensation has been placed on record. Even the basic employment records which remain in custody of the employer, such as attendance registers, wage registers, muster rolls, or correspondence allegedly calling upon the workman to resume duties, have not been produced. In industrial adjudication, when a workman alleges illegal termination and establishes cessation of employment, the burden shifts to the employer to demonstrate that the action was in conformity with statutory requirements. The employer is expected to produce the best evidence available with it because the relevant records remain under its possession.

19. The failure of the Respondent to produce such material creates an adverse inference against the employer. The provisions contained in Section 25F of the Industrial Disputes Act are mandatory in character. Compliance therewith regarding notice, compensation, and conditions precedent before retrenchment constitutes protection available to a workman against deprivation of livelihood. Once the employer fails to demonstrate compliance with these mandatory conditions, the retrenchment becomes unsustainable. In the present matter, there is absolutely no material to indicate compliance with Section 25F. Therefore, the conclusion becomes difficult to avoid that the discontinuation of the Petitioner from service was effected in breach of the statutory

safeguards prescribed under law.

20. This Court also finds little substance in the defence of abandonment sought to be raised by the Respondent. The concept of abandonment cannot be inferred merely because a workman remains absent for some period. Abandonment necessarily requires intention on the part of the employee to relinquish employment. Such intention cannot be presumed because loss of employment carries serious consequences for a workman. Courts have repeatedly held that abandonment is a matter of intention to be gathered from surrounding conduct and acceptable evidence. Mere absence from duty does not amount to abandonment unless the conduct indicates unwillingness to continue in service.

21. In the present case, the Respondent did not initially raise any plea of abandonment during conciliation proceedings. The defence appears for the first time in paragraph 6 of the Written Statement filed before the learned Labour Court, wherein it is alleged that after relaxation of lockdown restrictions, the Petitioner “found it convenient not to report for work.” This subsequent stand appears more in the nature of an improvement. If really the Petitioner had abandoned service, the employer could have immediately issued notices calling upon him to resume duties or could have initiated disciplinary proceedings for unauthorized absence.

22. More importantly, no domestic enquiry whatsoever was conducted against the Petitioner. No charge-sheet alleging unauthorized absence or misconduct was issued. No opportunity of hearing was granted. Industrial jurisprudence requires that where

abandonment is alleged, the employer must establish the same through a cogent evidence. Mere pleading in Written Statement cannot substitute proof. The law does not permit an employer to avoid statutory obligations by asserting that the workman abandoned service. The burden of proving abandonment squarely rested upon the Respondent, that burden has remained wholly undischarged.

23. The findings recorded by the learned Labour Court regarding closure of the establishment during COVID-19 pandemic also require careful scrutiny. The Petitioner had admitted in cross-examination that because of the pandemic the establishment remained closed for a certain period during March 2020. However, he specifically denied the suggestion that the factory remained continuously closed for four months. The learned Labour Court, however, appears to have read only one part of the testimony while ignoring the categorical denial which immediately followed. Evidence cannot be appreciated in such fragmented manner. A statement made by a witness has to be read in entirety. Partial reading of deposition leads to incorrect factual conclusions.

24. The learned Labour Court proceeded on the footing that since the establishment remained closed for four months, the question of compliance with Sections 2(oo) and 25F of the Industrial Disputes Act would not arise. In the considered view of this Court, such conclusion is not borne out from the evidence on record. Temporary closure during pandemic period by itself does not explain why, after reopening of operations, all other workmen resumed duties while the Petitioner alone was allegedly denied

work. The real controversy was not merely regarding temporary closure but regarding the events which took place after reopening of the establishment. On that material aspect, the evidence led by the Petitioner remained consistent that he was not permitted to resume duties. Therefore, the reasoning adopted by the learned Labour Court appears to be based upon misreading appreciation of evidence.

25. The reliance placed by the Respondent upon the judgment in *Vilas Ganpati Patil* also does not assist the Respondent. In the said matter, the Court found on facts that the workman had never offered himself for work after the alleged date of termination, that the communication relied upon by him was not proved to have been served, and that there was no evidence showing refusal of work by the employer. In those circumstances, the Court held that the case was one of abandonment. However, the factual position in the present case is different. Here, the Petitioner immediately issued legal notice, approached conciliation machinery, repeatedly asserted illegal termination, and consistently expressed willingness to resume duties. The conduct of the Petitioner throughout indicates assertion of employment rights rather than abandonment thereof. Simultaneously, the conduct of the employer does not demonstrate a consistent stand that the Petitioner was always free to join duties. Therefore, the ratio of the said judgment cannot be applied without considering the factual distinction between the two cases.

26. The contention of the Petitioner that he continuously sought reinstatement also appears to be supported by the material on

record. The Advocate's notice, the demand letter, the proceedings before the Deputy Labour Commissioner, and the pleadings before the Labour Court all disclose that the Petitioner desired restoration of service. This is not a case where the workman abandoned service and subsequently raised a monetary claim after prolonged silence. The record shows that within a reasonable period after cessation of employment, the Petitioner initiated legal proceedings seeking reinstatement. Such conduct is inconsistent with the theory of voluntary abandonment.

27. In my considered opinion, the Petitioner would not be entitled to the relief of back wages merely on the basis of a statement contained in the legal notice issued through the Advocate, particularly when such assertion has not been reiterated on oath in the affidavit of evidence filed before the learned Labour Court. It is true that in the legal notice there is reference to the Petitioner remaining unemployed after termination of service. However, a legal notice by itself cannot be treated as substantive evidence unless the contents thereof are duly affirmed and proved through sworn testimony before the Court.

28. In the present case, though the Petitioner has succeeded in establishing that the termination of his services was illegal and contrary to the mandatory provisions of law, the material relating to unemployment during the interregnum period is not sufficiently established through evidence on oath. The affidavit in lieu of examination-in-chief ought to have contained categorical averments regarding non-employment and absence of gainful income during the relevant period. Mere reference to contents of

the Advocate's notice would not, by itself, satisfy the requirement of legal proof. A notice issued prior to litigation may indicate the stand of the party, but unless the same is supported by sworn testimony before the Court, it cannot be treated as proof for awarding full back wages. This Court is therefore of the opinion that while the Petitioner deserves reinstatement with continuity of service on account of the illegality committed by the Respondent, the relief of back wages cannot be granted as a natural or automatic consequence in the peculiar facts of the present case.

29. This Court is conscious of the limited scope of interference under Articles 226 and 227 of the Constitution of India. The writ Court does not ordinarily act as a Court of appeal for reassessing every factual finding recorded by the Labour Court. However, where findings are based on misreading of evidence, non-consideration of material circumstances, or application of incorrect legal principles, supervisory jurisdiction can certainly be exercised to prevent miscarriage of justice. In the present case, the learned Labour Court ignored material circumstances indicating oral termination, accepted a plea of abandonment without proper proof, and misread the deposition regarding closure of the establishment. Such findings cannot be permitted to attain finality merely on the ground of limited writ jurisdiction.

30. Considering the matter in its entirety, this Court is satisfied that the Petitioner has established that his services came to be orally terminated by the Respondent without compliance of mandatory statutory procedure. The Respondent has failed to establish voluntary abandonment of service through legally

admissible and cogent evidence. The findings recorded by the learned Labour Court on these issues are therefore unsustainable both on facts and in law.

31. In view of the foregoing discussion, and upon overall assessment of the material submissions, evidence on record, and the findings arrived at hereinabove, the following order is passed:

- (i) The Writ Petition is partly allowed;
- (ii) The Award dated 1 October 2024 passed by the learned Labour Court, Pune in Reference (IDA) No.453 of 2020 is quashed and set aside to the extent it denies reinstatement and continuity of service to the Petitioner;
- (iii) It is declared that the action of the Respondent in terminating the services of the Petitioner with effect from 17 May 2020 is illegal and contrary to the provisions of the Industrial Disputes Act, 1947;
- (iv) The Respondent is directed to reinstate the Petitioner in service within a period of eight weeks from the date of uploading of this judgment, with continuity of service for all legal and service purposes;
- (v) However, the Petitioner shall not be entitled to back wages for the intervening period;
- (vi) It is clarified that continuity of service granted under this order shall enure for the purposes of seniority, retiral benefits and all other consequential service benefits in accordance with law;

(vii) Rule is made partly absolute in the aforesaid terms.

(viii) In the facts and circumstances of the case, there shall be no order as to costs.

(AMIT BORKAR, J.)