

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2704 OF 2017
WITH
INTERIM APPLICATION NO.13712 OF 2025
WITH
CIVIL APPLICATION NO.3037 OF 2017

Vikram Kapurchand Shah ... Petitioner
V/s.
Kalim Ahmed Ahsan Ali Ansari & Ors. ... Respondents

Mr. Saurabh Pakle with Mr. Nilesh Desai i/by Mr. S.M.
Ketkar for the petitioner.

Mr. Mayuresh Modgi for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 13, 2026.

P.C.:

1. By the present writ petition, the petitioner calls in question the legality and correctness of the Judgment and Award dated 23 August 2016 passed by the Labour Court, whereby the petitioner has been directed to reinstate respondent No.1 in service with full back wages and continuity of service with effect from 2 April 2008.
2. The material facts leading to the filing of the present petition are as follows. Respondent No.1 claims to have been employed with the petitioner since 3 September 1999 on monthly wages of Rs.6,000. He asserts that he was required to work for 12 hours per day and that his service record remained unblemished throughout.

According to him, the petitioner is a member of the same family which owns three galas, operates 60 Japani power looms and two warping machines, and employs about 25 workers in that unit, apart from 20 additional employees engaged for other activities. It is further alleged that the petitioner maintained attendance and wage registers but did not issue attendance cards. Wages were allegedly disbursed against signatures obtained on vouchers, and work was taken jointly from the employees.

3. Respondent No.1 contends that when he reported for duty on 2 April 2008, the petitioner called him to the office and orally informed him that he would not be permitted to continue work from that day, and directed him to leave. He states that he thereafter approached the petitioner and complained regarding respondent Nos.2 to 4, but his grievance was not considered and his services were terminated. He further alleges that wages amounting to Rs.5,400 for the period from 1 March 2008 to 31 March 2008 were withheld.

4. It is further alleged that the petitioner neither paid leave wages nor granted the benefit of leave. Respondent No.1 claims to have issued a demand notice dated 3 May 2008 by registered post acknowledgment due. He also approached the Conciliation Office at Bhiwandi. As the petitioner did not appear before the Conciliation Officer, the conciliation proceedings failed and the industrial dispute came to be referred to the Labour Court for adjudication.

5. The petitioner filed a written statement denying the claim. It is contended that the warping machine in question is solely owned by the petitioner and that respondent Nos.2 to 4 have no connection with the said machine or establishment, and have been unnecessarily impleaded with ulterior motive. It is further stated that respondent No.1 was engaged only for a period of two months on piece rate basis and was paid upon submission of bills. According to the petitioner, the duty hours of respondent No.1 were not fixed, and he was not required to remain in the factory premises in the absence of work. The petitioner asserts that respondent No.1 did not complete 240 days of service during the period from 3 April 2007 to 2 April 2008. The existence of any industrial dispute is denied. It is also contended that the establishment is governed by the B.I.R. Act and, therefore, the reference under the Industrial Disputes Act is not maintainable.

6. Respondent Nos.2 to 4 also filed their written statement contending that they have no concern with the warping machine where respondent No.1 claims to have worked. They deny any connection with the said establishment or employment of respondent No.1, and prayed that the reference against them be rejected.

7. By the impugned Award dated 23 August 2016, the Fourth Labour Court, Thane allowed the reference and directed the petitioner to reinstate respondent No.1 with full back wages and continuity of service from 2 April 2008. Aggrieved thereby, the petitioner has preferred the present writ petition.

8. Learned counsel for the petitioner submits that muster rolls have been produced on record. It is contended that the petitioner carries on a separate business and that respondent No.1 was employed only from 3 April 2007 to 2 April 2008. According to the petitioner, respondent No.1 was brought to work by one Salim, who was engaged on contract basis as a warper. Upon Salim's return, respondent No.1 discontinued work. It is urged that respondent No.1 did not complete 240 days of continuous service. It is further submitted that respondent No.1 has failed to produce any documentary evidence to establish employment since 3 September 1999 or completion of 240 days. The petitioner asserts that the claim is false. Attention is also invited to the no objection given by respondent No.1 for deletion of respondent Nos.2 to 4. It is further submitted that respondent No.1 admitted that there was electricity load shedding for 6 to 8 hours daily, which renders his claim of 12 hours' work improbable. The petitioner contends that the reference is not maintainable under the Industrial Disputes Act as more than 45 employees were engaged. It is also submitted that respondent No.1 admitted that he does not recall making efforts to secure alternate employment, and therefore the claim for back wages is unsustainable. According to the petitioner, respondent No.1 has failed to establish that he remained unemployed despite genuine efforts. On these grounds, it is urged that the writ petition be allowed.

9. Learned counsel for respondent No.1 submits that the termination was effected without compliance with due procedure of law. It is contended that respondent No.1 had completed 240

days of service and had worked continuously for 8 years and 7 months. It is pointed out that notices were served upon the petitioner and respondent Nos.2 to 4 at the same address. The muster roll produced by the petitioner does not indicate employment of more than 20 workmen so as to attract the B.I.R. Act. The inspection report under the Minimum Wages Act records only 13 workmen. Therefore, it is submitted that the B.I.R. Act is not applicable.

10. It is further submitted that the business carried on by the petitioner and respondent Nos.2 to 4 is a joint family business operating from House No.798. The property tax assessment register reflects House No.798 in their joint names. It is contended that the petitioner has made inconsistent statements regarding the number of looms operated, though it is admitted that business is carried on from the said premises. It is further submitted that the petitioner admitted before the Court that respondent No.1 had worked with him for six years. The muster roll cum salary register has been placed on record by the petitioner, and respondent No.1 has filed his affidavit in evidence in support of his claim. Though it is stated that respondent No.1 was employed by one Salim, there is no specific pleading to that effect. It is therefore contended that the termination is illegal and that the writ petition merits dismissal.

Reasons and Analysis:

11. First, I turn to the muster roll and wage records, because the entire dispute about length of service revolves around these

documents. The petitioner has placed on record certain muster rolls and seeks to rely upon them to show that the respondent worked only for a limited period. According to the petitioner, those entries demonstrate that the respondent was in service only between April 2007 and April 2008. On that basis, it is argued that there was no long and continuous employment.

12. However, the matter does not end there. The respondent has produced a muster roll cum salary register and has stepped into the witness box by filing his affidavit in evidence. That affidavit sets out the details of his employment and the period for which he claims to have worked. It is not a bald assertion. It is supported by entries in the salary record which, on the face of it, indicate regular payment over a substantial period.

13. More importantly, in the connected proceedings between the same parties, the petitioner himself has made a clear admission in the written statement that respondent No.1 had worked with him for six years. That admission is on record. Once such an admission exists, the petitioner cannot lightly turn around and say that the respondent was engaged only for two months or for a short duration. An admission in pleadings is substantive evidence. It binds the party unless properly explained. No satisfactory explanation is offered here.

14. The petitioner has attempted to introduce a new version that the respondent was brought to work by a contract worker named Salim and that he was only working temporarily in Salim's absence. This case suffers from two serious defects. First, there is

no clear pleading to that effect in the written statement before the Labour Court. Second, no documentary material has been produced to substantiate this story. No contract with Salim is placed on record. No bills raised by the respondent as a piece-rate worker are produced. No register distinguishing permanent and temporary workers is shown. In industrial matters, documentary records maintained by the employer are expected to speak clearly. Here, they do not.

15. When the entire material is considered as a whole, the picture that emerges is not of a casual or fleeting engagement. The salary register and the respondent's affidavit support a case of regular employment. The earlier admission by the petitioner reinforces that conclusion. In contrast, the petitioner relies selectively on portions of muster rolls, particularly those pertaining to the period after the dispute arose. Such selective reliance does not inspire confidence. Records created or emphasized after the filing of a complaint must be examined with caution. They cannot override consistent documentary and oral evidence pointing to long employment.

16. In these circumstances, I find that the Labour Court was justified in giving greater weight to the registered wage entries, the respondent's sworn testimony, and the petitioner's own admission in earlier pleadings. The petitioner's attempt to confine the employment to a short span is not borne out by reliable evidence. The broader record supports the finding that respondent No.1 had served the establishment for a considerable period.

17. I now deal with the manner in which the respondent's services came to an end. This aspect goes to the root of the dispute.

18. The record does not disclose that any domestic enquiry was conducted before removing the respondent from service. There is no material to show that any charge was framed against him. No written notice was issued setting out the allegations, if any. There is no document calling upon him to explain his conduct. The employer has not placed on record even a simple show cause notice. This silence in the record is significant. What emerges instead is that on 2 April 2008 the respondent was called to the office and was orally told that he would not be permitted to work from that day onwards. There is no written termination order. There is no letter assigning reasons. There is no communication stating that his services were no longer required due to misconduct, redundancy, or any other lawful ground. The action was sudden and without warning.

19. In service matters, particularly where a workman claims long employment, termination cannot be left to oral instructions given across a table. Even where the employer has a genuine grievance, the law expects fairness in action. At the very least, the employee must know the case against him and must be given an opportunity to respond. If the employer proposes to rely on misconduct, an enquiry is required. If the case is of retrenchment, the statutory conditions must be complied with. None of these safeguards are shown to have been followed.

20. The petitioner has not produced any enquiry report. No witness has been examined to show that a disciplinary process was undertaken. There is also no evidence that retrenchment compensation or notice pay, as required under the law, was offered at the time of termination. In the absence of such material, the Court is left with only one conclusion. The termination was effected without following due procedure.

21. The Labour Court examined this aspect in detail. It noted the absence of any enquiry and the lack of documentary justification. On that basis, it held that the termination was illegal and unfair. Having reviewed the material, I find no error in that approach. The finding is supported by the record. The action of the petitioner, being abrupt and unsupported by due process, was rightly set aside.

22. For these reasons I hold that the Labour Court's conclusion that respondent No.1 was unlawfully removed from service is supported by the record. The Award of reinstatement with continuity and full back wages from 2 April 2008 is sustainable. The petitioner has not discharged the burden to demonstrate a legal or factual error deserving interference in writ jurisdiction.

23. Accordingly, the writ petition is dismissed. The impugned Award dated 23 August 2016 of the Fourth Labour Court, Thane is confirmed. The petitioner must comply with the Award within 4 weeks.

24. No order as to costs.

25. In view of this order, all pending interlocutory applications stand disposed of as infructuous.

(AMIT BORKAR, J.)