

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.279 OF 2026

Bombay Potteries & Tiles Ltd.	Petitioner
V/S	
Mazdoor Congress & Anr.	Respondents

**WITH
WRIT PETITION NO.4646 OF 2025**

Mazdoor Congress	Petitioner
V/S	
Bombay Potteries and Tiles Ltd. & Anr.	Respondents

Mr. Sudhir Talsania, Senior Advocate with Mr. Sailesh K. More *for the Petitioner in WP 279 of 2026 and for Respondents in WP 4646 of 2025.*

Ms. Nivedita S. Deshpande *for the Petitioner in WP 4646 of 2025 and for Respondents in WP 279 of 2026.*

**CORAM : SANDEEP V. MARNE, J.
DATE : 05 MARCH 2026.**

JUDGMENT:

1. These are cross Petitions filed by the Employer and the Union challenging the Award dated 11 July 2025 passed by the Labour Court, Mumbai. By the impugned Award, the Labour Court has directed payment of backwages for the period 14 June 1985 to 20 July 1986 to named workmen. The 33 workmen who have already received backwages in view of order passed in Complaint (ULP) No.1041 of 1986 are held not entitled to any backwages even though their names may appear in the list of workmen annexed to the order of reference. The Employer has

filed Writ Petition No.279 of 2026 challenging the entire Award. On the other hand, the Union has also challenged the Award to the limited extent of denial of interest and denial of benefits to some of the employees.

2. Briefly stated, facts of the case are that Bombay Potteries and Tiles Limited (**Employer**) is a company which was engaged in the business of manufacturing of tiles. It had set up two factories Kurla and Darukhana, Mumbai, in which several workmen were employed. The Bombay Potteries and Tiles Employees' Union used to represent majority of workmen in the two factories, which, according to the Employer, was the recognized Union. The Employer-Company put up a Voluntary Retirement Scheme (**VRS**) dated 22 August 1985 which did not evoke positive response and accordingly the VRS was withdrawn. On 7 November 1985, the Company expressed intention to close the two factories permanently and made an Application under Section 25-O of the Industrial Disputes Act, 1947 (**ID Act**) seeking permission to close down the two factories. According to the Employer-Company, settlement was arrived at with the recognized Union, under which the Employer agreed to pay compensation at the rate of 32 days' wages per year of service subject to minimum of Rs.15,000/- per worker. On 11 July 1986, Memorandum of Settlement (**MoS**) was executed with Bombay Potteries Tiles Employees Union. At that time, there were 782 permanent workers in the factory. According to the Employer, only 717 permanent workers were on roles as on 11 July 1986 on account of retirements and resignations of 65 workers in the meantime. Under the settlement, benefit of VRS was availed by 685 out of 717 workmen, who tendered

resignations and claimed settlement benefits. Under the Memorandum of Settlement dated 11 July 1986, according to the Employer, an amount of Rs. 1.9 crore was paid to the workers. According to the Employer, only 33 workmen refused to accept the settlement, and the factories had 103 casual workers, who ceased to be on the rolls of the Company with effect from 14 June 1985. The 33 workmen who remained in service joined a Union by the name “General Labour Union (Red Flag)” and filed Complaint (ULP) No.1041 of 1986 seeking direction to lift the lockout and for payment of wages. The Complaint was disposed of directing the Company to pay earned wages to 31 out of 33 workers by order dated 27 April 1987.

3. Since the number of workers got reduced to only 32 as on 11 July 1986, the Company issued Notice of Closure dated 20 July 1987 under Section 25-FFF of the ID Act and terminated services of the 32 remaining workers by offering them notice pay and closure compensation.

4. The General Labour Union (Red Flag) filed Complaint (ULP) No.955 of 1987 challenging Notice of Closure. Consent Terms were filed in the said Complaint, and the Complaint was disposed in terms of Settlement dated 28 August 1989, under which it was agreed that the 32 workers remained in service till 20 July 1987 and the wages were paid to them upto 20 July 1987.

5. Two employees viz. Vaman Shardul and Devram Sakharam Gavare filed Complaint (ULP) No.312 of 1991. Complaint (ULP) No.311 of 1991 was filed by Ibrahim Jiwaji Bhorl and Damien John Pereira on behalf of

all 888 employees seeking relief of wages for the period from 1 June 1985 to 20 July 1986. Both the Complaints were dismissed by Industrial Court by judgment and order dated 10 March 1995.

6. In the meantime, the shares of the Company were purchased by Shri Manoj Wadhwa from the erstwhile owners on 20 June 1990, who has acquired ownership in respect of the Company.

7. Shri Vaman Lalu Shardul and Damien John Pereira filed Writ Petition Nos.905 of 1995 and 1004 of 1995 challenging the order passed by Industrial Court on 10 March 1995. Both the Petitions were initially dismissed on 15 June 1995. Review of order dated 15 June 1995 was sought in which again clarification was issued by order dated 18 June 1995 that the remedy in respect of grievance of the settlement with unrecognized Union was to seek reference. Accordingly, Respondent No.1-Union raised Demand Letter dated 10 December 1996 for reinstatement of 103 casual workers in Annexure-A, full wages to 888 employees in Annexure-B for the period 14 June 1985 to 20 July 1986 alongwith interest. On 22 October 1999, a Reference was made by the appropriate Government to the Labour Court in respect of the said demand. Respondent No.1-Mazdoor Congress (Union) filed Statement of Claim which was resisted by the Employer by filing Written Statement. During pendency of the Reference, Theater and General Employees Union was also impleaded to the reference, which also filed its separate Statement of Claim on behalf of 129 employees for payment of wages from 14 June 1985 to 20 July 1986. The reference was allowed vide *ex-parte* Award dated 18 January 2006 directing the Employer to

make payment of wages to the workers. Employer's Application for setting aside *ex-parte* Award dated 18 January 2006 was rejected. The Employer accordingly filed Writ Petition No.2236 of 2010 before this Court challenging the *ex-parte* Award dated 18 January 2006. This Court stayed the Award dated 18 January 2006 subject to deposit of 50% awarded amount. Accordingly, an amount of Rs.1,03,20,000/- was deposited by the Employer on 15 March 2011. The Union and individual employees also filed Petitions challenging the same Award. By consent of the parties, the Award dated 18 January 2006 was set aside by this Court vide order dated 13 July 2018 and the reference was remanded for being decided afresh.

8. While remanding the reference by order dated 13 July 2018, this Court directed deposit of remaining 50% amount of Rs.1,03,20,000/-. The Employer got aggrieved by direction for deposit of remaining 50% amount and filed Civil Appeal No.905-907 of 2024 before the Supreme Court, which set aside the direction for deposit of remaining 50% amount. The remanded reference has been decided by the Labour Court by impugned Award dated 11 July 2025, the operative part of which reads thus:

- "i. The reference is partly allowed.
- ii. The workmen whose names are appearing in the Annexure 'B' to the order of reference excluding the list of workmen mentioned in Annexure 'A' are entitled to get full back wages for the period 14-06-1985 to 20-07-1986 & legal dues. The workmen those who are no more alive, their legal heirs shall be entitled to get back wages and legal dues for the said period i.e. 14-06-1985 to 20-07-1986. Prayer for interest is specifically rejected.
- iii. The first party, M/s. Bombay Potteries & Tiles Ltd. shall pay the said wages in one installment to all workmen mentioned in Annexure A, within one month without fail from the date of publication of the Award by Commissioner of Labour, Mumbai. The said back wages as per Clause B can be

disbursed from the 50% deposits made by the first party in the Hon'ble High Court and accrued interest, if any after permission from the Hon'ble High Court as regards withdrawal of the amount by proper application.

iv. In case the 1st party, M/s. Bombay Potteries & Tiles Ltd. fails to pay any of the installment as per the said amount within stipulated time, the 1 party, M/s. Bombay Potteries & Tiles Ltd. shall pay an interest @15% per annum from the said amount from the date publication of Award.

v. The 33 workmen those who have received back wages in view of order passed in Complaint (ULP) No.1041 of 1986 are not entitled to get any back wages even though or even if their names are appearing in the list of workmen annexed to the order of reference.

vi. In case if any workmen died during 14-06-1985 to 20-07-1987 or prior to that, their legal heirs are entitled to get back wages only upto the period of death of the concerned deceased workmen.

vii. Parties shall bear their own cost.

Vii. Copy of award be sent to Dy. Commissioner of Labour, Mumbai for necessary information.”

9. Aggrieved by the Award dated 11 July 2025, the Employer has filed Writ Petition No.279 of 2026. Mumbai Mazdoor Union has filed cross Petition challenging the Award to the extent of non-grant of some of the reliefs. The scope of Writ Petition No.4646 of 2025 filed by the Union is stated in paragraph 1 (i) to (iii) of the Petition as under:

“i. The concerned workmen even though held entitled for wages for period 14.06.1985 to 20.07.1986 due to them, they have not been granted interest upon the same even though same was granted in earlier award.

ii. Among the so called 103 casual employees, it was admitted that Shri. Damien Periera and Shri. Ramprasad were permanent employees, still relief backwages are not granted to them till date of their retirement.

iii. In case of 103 employees, no evidence produced on record to show they are casual yet they are denied benefits of reinstatement with full backwages.”

10. Both the Writ Petitions are taken up for analogous hearing.

11. Mr. Talsania, the learned Senior Advocate appearing for the Employer submits that the impugned Award is *ex-facie* erroneous as the

same seeks to adjudicate the issues which are concluded by judgment and order dated 10 March 1995 passed in Complaint (ULP) Nos.311 and 312 of 1991. That the issue before the Industrial Court in the said two Complaints was about entitlement of all 888 workers for wages from 14 June 1985 to 20 July 1986. That the Complaints were adjudicated on merits and the Industrial Court held that the Company was closed down on 14 June 1985 and since workers did not actually work from 14 June 1985 to 20 July 1986, they were not entitled to wages. That the very same issue is now decided by the Labour Court by directing payment of wages for the period from 14 June 1985 to 20 July 1986. That the Labour Court has thus sat in appeal over the decision of the Industrial Court and granted something which was specifically denied by the Industrial Court.

12. Mr. Talsania would further submit that the liberty granted by this Court in orders dated 15 June 1995 and 18 December 1995 was for raising a reference in respect of validity of settlement entered into with the Union. However, instead of seeking reference in respect of validity of settlement, the Union erroneously claimed very same benefit of payment of wages, which was rejected by the Industrial Court. That reference was not made in respect of validity of Memorandum of Settlement nor Labour Court framed any issue relating to validity of settlement. That therefore reference was not as per the liberty granted by this Court and the Labour Court has clearly overstepped its jurisdiction in adjudicating reliefs which are rejected by the Industrial Court. He would accordingly pray for setting aside the impugned Award.

13. *Per contra*, Ms. Deshpande, the learned counsel appearing for the Union submits that the Labour Court has passed the Award within four corners of the reference. That the demand for payment of wages from 14 June 1985 to 20 July 1986 was denied by Industrial Court only on account of its inability to adjudicate the issue of validity of settlement. That the Complaint (ULP) was dismissed essentially holding that the same was not maintainable before the Industrial Court. That therefore this Court granted liberty for raising demand for reference. She further invites attention of this Court to order dated 10 March 2003 by which Employer's objection of *res judicata* was expressly rejected by the Labour Court. She submits that reference was the correct remedy for the workers and the Union to claim the relief of wages during the period from 14 June 1985 to 20 July 1986. She submits that the Labour Court has rightly arrived at the conclusion that Closure Notice dated 7 November 1985 was illegal and in absence of permission that the ultimate closure took place on 20 July 1987. That therefore direction for payment of wages from 14 June 1985 to 20 July 1986 is perfectly in order. That the Employer is estopped from questioning correctness of the reference having not challenged the same. In support she relies on judgment of this Court in ***Gulf Oil Corporation Limited vs. Union of India & Ors.***¹

14. In support of Union's Writ Petition No.4646 of 2025, Ms. Deshpande submits that the Labour Court has erred in denying interest on the amount of wages though the workers are being paid wages after 35 long years. That denial of relief in respect of two workers Shri Damien John Pereira and Shri Ramprasad Bhatt is erroneous. That

1 2008 (3) Bom. C.R. 193.

denial of benefit to 33 workers of Complaint (ULP) No.955 of 1987 is erroneous. She would therefore pray for modifying the impugned Award by granting all reliefs demanded by the Union.

15. I have considered the submissions canvassed by the learned counsel appearing for rival parties. I have gone through the findings recorded in the impugned Award and have perused the records of the case filed along with the pleadings by the parties.

16. The short issue that arises for consideration is whether Labour Court could have granted the relief of payment of wages for the period from 14 June 1985 to 20 July 1986 to the concerned workers in the light of the denial of the same benefit demanded before Industrial Court in Complaint (ULP) Nos.311 and 312 of 1991.

17. The demand of the workers for payment of wages from 14 June 1985 to 20 July 1987 arises on account of the closure ultimately effected in respect of two factories on 20 July 1987. It appears that the Company had issued Notice of Closure dated 7 November 1985 and had filed Application under Section 25-O of the ID Act. The permission was accordingly not granted, which led to execution of Memorandum of Settlement dated 11 July 1986 with Union which Employer claims to be a recognized Union. Almost all workers, except 32, accepted the benefits under Memorandum of Settlement. Still Complaint (ULP) Nos.311 of 1991 and 312 of 1991 were filed on behalf of all 888 workers claiming wages for the period from 14 June 1985 to 20 July 1986. Prayers in Complaint (ULP) No.312 of 1991 were as under:

“(a) It be declared that the Respondents, their office bearers and agents have engaged in and are engaging in unfair labour practices under items 9 and 10 of Schedule IV of the Act.

- (b) Respondents be directed to pay full earned wages to the listed employee for the period from 14-06-1985 to 20-07-1986 along with the interest at the rate of ... with effect from the date on which the wages had become due to the listed employees.;
- (c) Respondents be directed to deposit the amount of full earned wages for the period from 14-06-1985 to 20-07-1986 due to the listed employee in the court;
- (d) Respondents be restrained from selling, mortgaging, transferring or any way dealing with the plant, machinery, any other property and land of the respondents wherever the same is situated and particularly at: 110 Raheja Centre, 214, Nariman Point, Bombay 400 021, (2) Pipe Road, Kurla, Bombay 400070, (3) Ready Road, Darukhana Devidayal Compound, Bombay 400 015,
- (e) Respondents be directed to forthwith issue Bank Guarantee of any Nationalize Bank for payment of the total amount of earned for the period from 14-06-1985 to 20-07-1986 to the listed employee;
- (f) interim and ad-interim relief in terms of above;
- (g) Cost to Complainants and listed employee;
- (h) Any other reliefs which the Hon'ble Court deems fit and proper under the facts and circumstances of this case;
- (i) Complainants crave leave to add, amend, alter, forge or modify the above if and when necessary"

18. However, Complaints of unfair labour practice came to be dismissed by the Industrial Court by judgment and order dated 10 March 1995. The Industrial Court held *inter alia* that the Company was closed down on 14 June 1985 and the Complainants failed to prove that they worked during the period 14 June 1985 to 20 July 1986. Relevant findings in this regard in paragraph 41 of Industrial Court's order dated 10 March 1995 read thus:

"41. From the above discussions, I come to the conclusion that the respondent company was closed from 14-6-85. The complainant miserably failed to prove that they work during the period from 14-6-85 to 20-7-86. When the complainant failed To prove that they have actually worked along with other employees from 14-6-85 to 20-7-86, naturally, they are not entitled for earned wages for the above period."

(emphasis added)

19. It appears that a grievance was raised by the Complainants in ULP Complaints that settlements executed by the Company were illegal as the same was not with the recognized Union. The resignations tendered by the workers were also sought to be declared null and void. The Industrial Court, however, rejected the contention that resignations were null and void and held in paragraph 48 of the judgment as under:

“48. Lastly, Shri. Deshpande, learned advocate argued that after going through the resignation letters, it revealed that the resignation letters are signed in the year 1986 and as the settlement dated 11.7.86 They were effective from 14-7-86. These resignation letters are having retrospective effect. The employer cannot terminate the relations Employees with retrospective effect in support of above arguments, complainants relied on the case decided by our High Court between Abarm Raibhan Versus Executive Engineer and Others reported in 1989-2-CLR, Page 331. The ratio decided in the case is not applicable to the present facts. In the above case, the service of the employees was terminated by the employer with retrospective effect. In the present matter the resignations are agreed to be effective with retrospective effect. In absence of pleadings and evidence, the issue in respect of retrospective resignation cannot be educated properly. Under the circumstances and conditions, the parties reached to such settlement cannot be understood. Whole settlement Dated 11-7-86 is required to be considered. Hence, the resignation cannot be declared null and void.”

20. So far as grievance about execution of Settlements dated 7 November 1986 and 28 August 1989 with unrecognized Union was concerned, the Industrial Court refused to declare them as void by holding in paragraph 47 of the judgment as under:

“47. The above submission made by Shri Deshpande learned advocate, are not acceptable because in absence of pleading from both the sides, evidence from both the sides and the issues of fairness, the settlement, the issue cannot be adjudicated properly. **The employees have received benefits as per terms of settlement. Not only this, but the courts have also passed several judgements relying on the settlements. Hence the 2 settlement dated 7-11-86 and 28-8-89 cannot be declared void.**”

(emphasis added)

21. Thus, the demand raised on behalf of 888 workers for payment of wages from 14 June 1985 to 20 July 1986 was rejected by holding in paragraph 49 as under:

“49. From the above discussion, I come to the conclusion that the company was closed from 14-6-85. The employees who were parties to the present complaint have not worked from 14-6-85 to 20-7-86. The complainant failed to prove their case. Hence, the following order:-

ORDER

- I. Complaint is dismissed
- II. No order as to costs”

22. The judgment and order dated 10 March 1995 passed by the Industrial Court was challenged by the workers by filing Writ Petition Nos.905 of 1995 and 1004 of 1995. Initially, the Petitions were dismissed by a short order. Ordinarily, a Writ Petition challenging order passed by the Industrial Court is filed and decided before a Single Judge of this Court. However, it appears that the concerned workmen added grounds and prayers for challenging settlements in the Petition. Thus, the issue of validity of settlements was sought to be agitated directly before the Division Bench of this Court though the same were not subject matter of challenge before the Industrial Court in Complaints of unfair labour practice. The Division Bench rejected both the Petitions by passing a short order on 15 June 1995 which reads thus:

“Rejected.

The remedy if any, is to raise an Industrial dispute.”

23. The concerned workers sought review of order dated 15 June 1995 in Review Petition wherein the Division Bench passed following order:

“On 15th June 1995, the division Bench comprising of one of us (Kapadia, J) passed the following order at the stage of admission in the above writ petition No. 905 of 1995.

"Rejected.

The remedy adopted is not proper

The remedy if any is under I.D.Act".

By the above two Review Petitions, review of the above order is sought by the original petitioners.

Heard learned counsel for the parties at length.

In the present matter, the following facts are required to be mentioned for disposing of the Review Petitions.

Petitioners herein filed complaints under section 28 read with Item No.9 and Item No.10 of Schedule IV of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. By the afore-stated complaints, the petitioners claimed earned wages for the period 14th June, 1985 upto 20th July, 1986. The complaints filed by the petitioners were dismissed by the Industrial court, which, inter alia, came to the conclusion that there was a settlement arrived at between the company and Bombay Tiles Union on 11th July, 1986 and as per the terms of the said settlement, the Union had collected resignations of 685 employees out of 717 employees. This was one of the grounds, on the basis of which the Industrial court rejected the claim for earned wages.

Being aggrieved by the dismissal of the complaints by the Industrial court, the above Writ Petitions Nos. 905 of 1995 and 1004 of 1995 came to be filed. **In the said Writ Petitions, it is contended on behalf of the original petitioners vide ground Nos. B, C, D, and E that the settlement dated 11th of July 1986 entered into between the Company and Bombay Potteries Union was not a valid settlement because Bombay Potteries was not a recognized Union and that the recognized Union was Mazdoor congress. It was also contended that the settlement dated 11th of July 1986 was not signed under Section 2 (p) read with section 18 (1) of the Industrial disputes Act, 1947 and therefore, the settlement was not binding on the employees.**

Since the Industrial Disputes Act empowers the Tribunal with power of adjudication and since the question of validity of the settlement came to be raised in the above two writ petitions, the above order directing the petitioners to seek a remedy under the Industrial Disputes Act, came to be passed. In the present Review Petitions, it is not the case of the petitioners that the remedy under Industrial Disputes Act is not available.

In our opinion, taking into account the above facts and in view of the fact that remedy is available under Industrial Disputes Act, we do not find any error warranting correction of the above order by a Review Petition. The grievance of the petitioners in the Review Petitions does not fall within the parameters for reviewing the order in question.

Accordingly, both the above Review Petitions are rejected."

(emphasis and underlining added)

24. It appears that the workers were not satisfied by order passed in Review Petition and carried the matter to the Hon'ble Apex Court by Special Leave Petition (C) Nos.18280-18281 of 1996 which was dismissed by order dated 20 September 1996.

25. Thus, the Division Bench refused to entertain direct prayer sought by the workers relating to validity of Memorandum of Settlement dated 11 July 1986 and left open the remedy for the workers to raise an industrial dispute. Thus, the workers were expected to raise a demand for reference only with regard to validity of Memorandum of Settlement dated 11 July 1986. Instead of doing so, the Union, representing the workers, once again pressed direct demand for payment of wages from 14 June 1985 to 20 July 1986, which was already rejected by the Industrial Court. Because demand was made for payment of wages, a reference was made by order dated 22 October 1999 for adjudication of dispute relating to reinstatement of 103 workmen and for payment of full wages to 888 workmen from 14 June 1985 to 20 July 1986. After Reference was made, the Union filed Statement of Claim raising following prayers:

“(A) 888 workmen mentioned in Annexure 'A' and/or their legal-heirs be paid full earned wages for the period from 14-6-85 to 20-7-86.

(B) The 103 workmen mentioned in Annexure 'B' be reinstated with full back wages and continuity of service w.e.f. 21-7-86. In respect of the deceased workmen, their legal heirs be paid full back wages w.e.f. 21-7-86 till the death of the deceased.

(C) All the workers mentioned in Annexure 'A' & 'C' and/or their legal heirs be paid interest on arrears @ 18% p.m.

(D) Any other order in the interest of justice be passed.”

26. Thus, neither in the Reference order nor in the prayers in the Statement of Claim any adjudication was sought in relation to validity of Memorandum of Settlement dated 11 July 1986. Naturally, the Labour Court did not frame any specific issue relating to validity of the settlement. The issues framed and answered by the Labour Court in the impugned Award are as under:

- | | | |
|-----|--|--|
| “1) | Whether the Second Party proves that their services were illegally terminated? | In the affirmative. |
| 2) | Whether the Second Party proves that the contract of employment between First Party & 888 employees was in existence during period of 14-06-1985 & 20-07-1986? | In the affirmative. |
| 3) | Whether the First Party proves that it has closed its industry since 20-07-1986? | In the affirmative. |
| 4) | Whether the 103 persons in the First Party list of the Schedule prove that they were in service of First Party on 14-06-1985? | Partly Affirmative in respect of only 2 workmen. |
| 5) | Whether the Second Party workmen are entitled to full back wages from 14-06-1985 to 20-07-1986? | Yes.
In the affirmative. |
| 6) | Whether 103 workmen are entitled for reinstatement with full back wages and continuity of service with interest on back wages at 18% p.a. ? | In the affirmative.
Only in respect of two workmen but no interest. |
| 7) | Whether the Reference is within limitation as per The Industrial Disputes Act, 1947? | In the affirmative. |
| 8) | Whether the present Reference is barred by principles of res-judicata? | In the negative. |
| 9) | What order? | As per final order.” |

27. Thus, neither any issue is framed relating to validity of settlement nor the same has been answered.

28. The Labour Court thus proceeded to adjudicate the very same demand for payment of wages to 888 workers for the period from 14 June 1985 to 20 July 1986 which was expressly declined by the Industrial Court. The Labour Court has recorded following findings for directing payment of wages to 888 workmen from 14 June 1986 to 20 July 1986:

“17) “Having regard to the oral, documentary evidence and material available on record, the 13 documents submitted with Exh. C-17 and I have given thoughtful consideration to the submissions by both the sides, it is very much apparent that all the workmen claimed that they worked during 14-06-1985 to 20-06-1986, they were not paid wages. The complaint preferred an appeal which was also dismissed and writ petition bearing No. 1146/1996 was filed before Hon'ble High Court. The closure notice dtd. 20-07-1986 was also challenged by the General Labour Union in Complaint (ULP) No. 955/1987. Some of the employees have withdrawn their resignations, the resignations were obtained by the union and were submitted to the first party. The employees were asked to sign on paper at the time of payment of cheques through window having size 10 X 10. Considering of these aspects, it is apparent from record that notice of closure dtd. 07-11-1985 and **memorandum of settlement is effected on 11-07-1986. Firstly, company gave notice of closure and then effected a memorandum of settlement i.e. from November 1985 upto to July 1986.** If all the permanent employees accepted their entire legal dues by way of retrenchment compensation and submitted voluntary resignation then there was no question of claiming legal dues. Company clearly, unequivocally admitted that there were 782 permanent employees. The recognized trade union by legal mode who has accorded the recognition by the Industrial Court, it cannot be said that said union ceases to exist unless its recognition and existence is canceled as per law.

18) In the present case, after notice of closure dtd. 07-11-1985, there is no proper legal and valid permission by the government by which the government permitted the closure of two units of the first party company. There is no surrender of licence to the licensing authority regarding stoppage of work. There is no proper evidence that entire machinery is sold out and company has vacated the premises in between 14-06-1985 to 20-07-1986. Even for the sick industries declaration or permission from the appropriate authority is needed or declared that unit is sick industrial unit for reconstruction and rehabilitation as per law. Hence, certainly all the

permanent employees were not paid wages during 14-06-1985 to 20-07-1986. Second party certainly established that contract of employment between first party and 888 workmen was in existence during 14-06-1985 to 20-07-1986. Present case is of the final closure of the industrial unit. **Hence, I answer issues No. 1 & 2 in the affirmative.”**

(emphasis added)

29. In my view, the Labour Court has clearly committed a jurisdictional error in adjudicating the very same issue once again by sitting in Appeal over in the judgment and order passed by the Industrial Court on 10 March 1995. It must be borne in mind that rejection of prayer for payment of wages to 888 workers from 14 June 1985 to 20 July 1986 has been confirmed by this Court and by the Hon'ble Apex Court. It was therefore not open for the Labour Court to once again adjudicate the very same prayer through a reference.

30. As observed above, the limited window left open by this Court was for making a reference under ID Act in relation to validity of settlement with the Union. However, neither workers nor their Union sought any reference with regard to validity of the Memorandum of Settlement dated 11 July 1986. It would have been a different matter if adjudication in respect of validity of Settlement dated 11 July 1986 was sought and Labour Court was to arrive at a finding that the Settlement was void for having been entered into with unrecognized Union. If any relief for wages was granted after holding that the Settlement was void, the same could have been within the liberty reserved by this Court. However, in the present case, neither any issue is framed with regard to validity of Settlement nor the same is answered. Without framing any issue relating to validity of Settlement, the same prayer of payment of wages from 14 June 1985 to 20 July 1986 is adjudicated by the Labour Court.

This has resulted in contradictory findings recorded by the Industrial and Labour Courts, resulting in a serious jurisdictional error on the part of Labour Court warranting interference by this Court.

31. If the same prayer for payment of wages from 14 June 1985 to 20 July 1986 is permitted to be adjudicated once again by the Labour Court, the two Orders passed by the Division Bench dismissing the earlier petitions and conforming the order passed by the Industrial Court would be rendered nugatory. It must be borne in mind that the orders of this Court have been upheld by the Supreme Court.

32. There is yet another angle from which the matter can be viewed. The workers had accepted amounts and had tendered resignations as per the Settlements. Since Settlements are not challenged before the Labour Court, they bind the workers. The Industrial Court held while dismissing ULP complaint that “*The employees have received benefits as per terms of settlement. Not only this, but the courts have also passed several judgements relying on the settlements. Hence the two settlements dated 7-11-86 and 28-8-89 cannot be declared void.*” This Court felt that the settlement could only be challenged in reference under the ID Act. It accordingly reopened the doors for the workers to claim benefits of wages by challenging the settlements. However, the workers and their union failed to challenge the two settlements. If Settlements remain unchallenged and valid, there is no question of awarding wages to the workers contrary to the terms of settlement.

33. What the Labour Court has done in the present case is determination of entitlement of wages of the workers by bypassing the

terms of Settlements. The Labour Court was made aware of the Settlements which is clear from the findings recorded by it that: *‘memorandum of settlement is effected on 11-07-1986. Firstly, company gave notice of closure and then effected a memorandum of settlement i.e. from November 1985 upto to July 1986.’* Though the settlement dated 11 July 1986 is referred to, the same is not declared void, as there was no prayer nor any issue framed about legality of the settlement.

34. In the present case, the workers and the Union have taken calculated chances. They first felt that the complaint under Section 28 of the MRTU & PULP Act was the correct remedy for claiming wages. They attempted to prove that the closure did not take place on 14-06-1985 and led evidence before Industrial Court that the workers worked during 14 June 1985 to 20 July 1986 but were not paid wages. However they miserably failed in proving so, which is clear from the findings of the Industrial Court that: *“From the above discussions, I come to the conclusion that the respondent company was closed from 14-6-85. The complainant miserably failed to prove that they work during the period from 14-6-85 to 20-7-86.”* After ULP Complaint was dismissed, they pursued the matter right upto the Supreme Court, but failed and the order of the Industrial Court attained finality.

35. The liberty to challenge the Settlements was granted by this Court essentially because the workers sought to directly challenge the Settlements by filing Writ Petitions before the Division Bench. In their Writ Petitions, they incorporated Grounds B, C, D and E directly challenging the Settlements before this Court which is why liberty was granted to them to raise an industrial dispute only qua Settlements. In

absence of any challenge to the Settlements, the Labour Court was not expected to once again adjudicate whether there was closure on 14 June 1985 and whether the workers worked during 14 June 1985 to 20 July 1986.

36. Ms. Deshpande has sought to salvage the situation by submitting that the Employer never challenged the order of reference. She submits that if reference was outside the liberty granted by Division Bench of this Court, the Employer ought to have challenged the order of Reference. I am unable to agree. The reference was made on the basis of demand made by the Union. Therefore, if reference was not in accordance with liberty granted by this Court, Union ought to have taken steps for correcting the scope of reference. The reference made by the appropriate Government was clearly outside the liberty granted by the Division Bench of this Court. Therefore, the burden was on the Union to have the reference corrected and brought within the ambit of liberty granted by this Court. Instead of doing so, the Union took chances and sought adjudication of same prayers which were rejected by the Industrial Court and which were also outside the liberty granted by this Court.

37. Reliance by Ms. Deshpande on judgment of this Court in ***Gulf Oil Corporation Limited*** (supra) does not cut any ice. No doubt, Labour or Industrial Court which secures jurisdiction on the basis of reference cannot go into the question of validity of reference. However, if the reference itself is erroneous, it is also a duty of party at whose instance reference is made to have the same corrected. In the present case, the prayer for payment of wages for the period from 14 June 1985 to 20 July

1986 was expressly rejected by the Industrial Court, whose order has been upheld upto the Hon'ble Supreme Court. Since validity of Settlement was outside jurisdiction of Industrial Court, that limited remedy was left open by the Division Bench of this Court for being sought in a reference under ID Act. The reference order however, travelled outside the said liberty. It was the duty of the Union and workers to ensure that the reference to the Labour Court was within the four corners of liberty granted by this Court. I am therefore, not in agreement with submissions of Ms. Deshpande that it was the duty of Employer to challenge order of reference.

38. Ms. Deshpande has also relied upon the interlocutory order dated 10 March 2003 passed by the Labour Court in the reference. In my view however, the order dated 10 March 2003 does not come to the rescue of the Union and the workmen. The limited issue determined by the Labour Court by order dated 10 March 2003 was about applicability of bar under Section 59 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The objection was not about maintainability of reference. The reference was undoubtedly maintainable but was required to be confined to the liberty granted by the Division Bench of this Court. However, neither the scope of the reference was confined to the limited liberty nor the workers and the Union took any steps to align the reference with the liberty granted by this Court. They also took the chance of not raising any prayer in the Statement of Claim for declaring Settlement to be void.

39. Upholding the order of Labour Court would mean permitting adjudication of same prayer, which is expressly rejected by the Industrial

Court, whose order has been upheld upto the Hon'ble Supreme Court. Though this Court granted liberty for making reference in relation to validity of Settlement, the said issue has not been decided by the Labour Court in the impugned Award. The workers and the Union have failed to take the benefit of liberty granted by this Court and took calculated risk of pressing same relief which has once been adjudicated by the Industrial Court. In my view therefore, the impugned Award is clearly unsustainable and liable to be set aside.

40. Since the Award itself is being set aside, nothing would remain to be adjudicated in Writ Petition No.4646 of 2025, which deserves to be dismissed.

41. In view of the above discussion, I proceed to pass the following order:

- i) Award dated 11 July 2025 made by Labour Court, Mumbai in Reference (IDA) No.716 of 1999 is set aside.
- ii) Writ Petition No.279 of 2026 filed by the Employer is **allowed**.
- iii) Writ Petition No.4646 of 2025 filed by the Union is **dismissed**.
- iv) The entire deposited amount in pursuance of order passed in Writ Petition No.2236 of 2010 alongwith accrued interest shall be refunded to the Petitioner/Bombay Potteries and Tiles Limited (Employer-Company).

(SANDEEP V. MARNE, J.)

42. After the order is pronounced, Ms. Deshpande would pray for restraining the Employer-Company from withdrawing the amount of Rs.1,03,20,000/- deposited in this Court on 15 March 2011. The prayer is opposed by Mr. Talsania. The Registry shall permit withdrawal of the amount deposited in Writ Petition No.2236 of 2010 after a period of six weeks.

(SANDEEP V. MARNE, J.)

Digitally signed
by
SUDARSHAN
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