

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5244 OF 2022

Ashok Laxman Ruptakke,
Age 38 years, Occupation Nil,
R/at: Flat No.402, Sai Samarth,
D Wing, Vetal Nagar, Ambegaon Bk.
Taluka Haveli, District Pune 411 046

... **Petitioner**

Digitally
signed by
ATUL
GANESH
KULKARNI
Date:
2026.03.26
12:14:18
+0530

Vs.

Uttara Foods and Feeds Private Limited,
through it's authorized representative,
having office at Ketkavale, Saswad-
Narayanpur, Taluka Purandar,
District Pune 412 205 ALSO AT
Uttara House 2, Wellis Road, Camp,
Pune 411 001

... **Respondent**

Ms. Samiksha Kanani with Ms. Gayatri Naik for the
petitioner.

Mr. Varun Rajiv Joshi with Mr. Chetan Arvind Alai for
the respondent.

CORAM : **AMIT BORKAR, J.**

RESERVED ON : **MARCH 12, 2026.**

PRONOUNCED ON : **MARCH 26, 2026**

JUDGMENT:

1. Rule. Rule is made returnable forthwith.

2. By the present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner calls in question the legality and correctness of the Judgment and Award dated 13 December 2021 passed by the Labour Court No.3 at Pune in Reference (I.D.A.) No. 294 of 2016, whereby the reference came to be dismissed.

3. The facts giving rise to the present petition, as set out by the petitioner, in brief, are that the petitioner entered the service of the respondent on 1 April 2005 as a Premix Assistant in Grade IX pursuant to an appointment letter dated 18 April 2005, and his services were thereafter confirmed by communication dated 21 October 2005. According to the petitioner, he discharged his duties without any blemish till the year 2015. It is his case that thereafter, owing to internal disputes, labour unrest, and financial difficulties faced by the respondent, the respondent commenced terminating services of employees and also withheld payment of salaries to certain employees. In this background, the petitioner approached the concerned officers of the respondent and sought an explanation regarding non-payment of his salary, bonus, and revision in wages for the year 2014. The petitioner asserts that on 1 November 2015, his services came to be terminated illegally by the respondent, and at the same time, the respondent failed to pay his salaries for the months of August, September and October 2015, along with the Diwali bonus for that year and the revised wages for the year 2014. It is further his case that such termination was wrongful and effected in a manner preventing him from entering the factory premises. The petitioner contends that, in the

proceedings before the Labour Court, while disputing the allegation of illegal termination, the respondent relied upon a letter dated 1 November 2015 purportedly addressed to the petitioner, which was described as a transfer order.

4. The petitioner further states that since certain dues remained unpaid at the instance of the respondent, he approached the appointing officers, namely Mr. Phalatkar and Mr. Arade, seeking redressal. However, according to the petitioner, instead of addressing his grievance, the said officers threatened him and drove him away, and also instructed the security personnel to prevent his entry into the company premises. It is his case that he immediately approached the Labour Commissioner on 1 November 2015. The Labour Commissioner initiated conciliation proceedings by calling upon the said officers to resolve the dispute. However, as no resolution could be arrived at, the dispute came to be referred for adjudication to the Labour Court No.3 at Pune.

5. Upon such reference, the dispute was registered as Reference (I.D.A.) No. 294 of 2016 before the Labour Court at Pune. The respondent entered appearance on 31 March 2018 and filed its written statement, thereby denying the allegations made by the petitioner. The Labour Court thereafter framed the necessary issues, and both parties led evidence in support of their respective cases. After considering the material on record and upon hearing both sides, the Labour Court No.3 at Pune, by its Judgment and Award dated 13 December 2021, dismissed the said reference. The petitioner further states that subsequently he became aware of a public notice dated 25 November 2015 issued by the Bank of

India, informing the public at large about taking possession of secured assets under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, wherein the property mentioned at Sr. No.2 pertains to the office premises of the respondent. On that basis, it is contended that the financial condition of the respondent had deteriorated, and the respondent had initiated termination of employees on a large scale. It is the petitioner's case that, due to such financial crisis, several temporary employees were also terminated around the same period.

6. The petitioner further contends that the salary indicated in the alleged transfer order dated 1 November 2015 was lower than the salary offered to newly recruited employees of the respondent. By way of illustration, reference is made to one Mr. Khapte, who joined the respondent in October 2011, whereas the petitioner claims to be a third-generation employee of the respondent establishment. It is asserted that the said employee was paid higher wages than those offered to the petitioner. The petitioner maintains that the said transfer order was never served upon him, and he became aware of the same only when it was produced before the Labour Court. The said order purportedly directed his transfer from Pune to Ambad, Jalna, which is at a distance of approximately 300 kilometres. It is further contended that even assuming such order existed, directing the petitioner to report at such a distant place on the same day was impracticable. The petitioner, without prejudice to his rights and contentions, states that even at present he is willing to resume duties at Ambad,

Jalna, provided he is reinstated with continuity of service, back wages, and parity in pay in accordance with the prevailing salary structure of the respondent.

7. Ms. Kanani, learned Advocate appearing for the petitioner, submitted that the respondent–employer has failed to place on record any cogent material to demonstrate that the petitioner was repeatedly called upon to resume duties. It is her contention that no communication whatsoever was sent by speed post or any other recognized mode requiring the petitioner to report for work. She further submits that the alleged transfer order is merely a device adopted by the employer with an intention to bring about termination of the petitioner’s services under the guise of transfer. According to her, the said order was never served upon the petitioner, and the endorsement therein stating that the petitioner refused to accept the same is a unilateral remark made by an employee of the management. It is urged that there is no contemporaneous or independent material on record to establish that any genuine attempt was made to serve the transfer order upon the petitioner. She further submits that the petitioner was drawing a last basic salary of Rs.10,200/-, whereas the salary now sought to be offered by the respondent is Rs.9,000/-, which is even lower than the petitioner’s earlier wages and not commensurate with his earnings for the period 2013–2014. Learned counsel further submitted that during the relevant period when the petitioner’s services came to be discontinued, the respondent–company had already received notice of action under the provisions of the Securitisation Act, and in that background,

services of several other employees were also terminated. It is, therefore, her submission that the petitioner's termination was effected without assigning any reason and without following the due procedure prescribed in law.

8. Per contra, Mr. Joshi, learned Advocate appearing for the management, submitted that the petitioner was not terminated, but was transferred by an order dated 1 November 2015 to the respondent's division at Ambad, in accordance with the terms and conditions set out in the said transfer order. He submits that although no further correspondence took place between the parties thereafter, the respondent, in its written statement dated 31 March 2018, has specifically taken a stand that the services of the petitioner were never terminated, and that the respondent is ready and willing to accommodate the petitioner at the transferred location, as there is no work available at Narayanpur. It is his submission that even at present, if the petitioner is willing to report at the transferred place, the respondent is prepared to take him back in service. Inviting attention to the cross-examination of the petitioner, learned counsel for the management submitted that though the petitioner expressed willingness to join duties at Jalna, he in fact did not report at the transferred post. He further relied upon the findings recorded by the Labour Court to submit that the Labour Court has rightly noted that the transfer order contains an endorsement that the petitioner refused to accept the same. On that basis, it is contended that when an employee, despite repeated opportunities extended by the employer to resume duties, fails to avail such opportunity, he cannot thereafter claim

reinstatement with back wages as a matter of right. On these grounds, he prays for dismissal of the writ petition.

REASONS AND ANALYSIS:

9. I have carefully considered the rival submissions made on behalf of the petitioner and the management, as also the record placed before me. The main dispute is whether the petitioner was in truth terminated from service, as alleged by him, or whether he was only transferred to Ambad and later failed to join there, as claimed by the respondent. This issue has to be answered by looking at the surrounding facts, the documentary material, and the conduct of both sides.

10. The case of the petitioner is that he was working with the respondent for many years and there was no complaint about his work. This part is important because it shows his service was steady and not disputed earlier. He says that later on, the company started having money problems and labour issues, and in that situation many employees were removed. According to him, his own service also came to an end on 1 November 2015. However, the respondent is trying to show that it was not termination, but only a transfer. The petitioner is clearly saying that this so called transfer order was never actually given to him in proper manner. He also says that the remark written on that order, that he refused to accept it, is only written by the management side and not supported by any independent material.

11. This part needs careful consideration. When an employer says that an employee refused to accept an order, then the

employer must show proper proof. There should be some record to show when, where, and how the order was attempted to be served. Only writing on the document that the employee refused is not enough. There must be some reliable material from that time itself. In the present case, such material is not clearly shown. Therefore, the submission of the petitioner cannot be lightly rejected. It creates doubt about whether the transfer order was really served or not.

12. Another important point raised by the petitioner is about the financial condition of the company. He says that at that time, the respondent had received notice under the Securitisation Act and was under financial stress. He also says that many employees were terminated around that time. This fact supports his case that the company was reducing staff. In such background, the Court must see whether the transfer was genuine or whether it was only a method to remove the employee without clearly stating termination. Financial difficulty can explain some decisions, but it does not allow unfair treatment.

13. Now coming to the stand of the management. The respondent says that there was no termination at all. According to them, the petitioner was only transferred on 1 November 2015 to Ambad division, and he did not join there. They say that there was no work at Narayanpur, so he was required at Ambad. They also say that even now they are ready to take him back if he joins at that place. If this version is correct, then the case becomes different. It would mean that the employee himself did not join duty. But this stand will succeed only if the transfer order is shown

to be real, properly issued, and properly communicated. The management has relied on the cross examination to say that the petitioner showed willingness to join at Jalna, but he did not actually join. However, this fact alone does not conclude the issue. Saying that he was willing is one thing. Actually getting a fair chance to join is another thing. If he never received the transfer order properly then his failure to join cannot be treated as refusal in law. The Court must look at the full picture. It must see whether the employer acted in fair manner. If not, then the employer cannot take benefit of technical points.

14. The Labour Court has mainly relied on the remark in the transfer order that the petitioner refused to accept it. But such remark, by itself, is weak evidence when the employee denies it. There is no independent proof supporting it. In such matters, the Court has to be careful. Sometimes, termination is shown as transfer to avoid legal consequences. Therefore, the Court must see the real nature of the action and not only the words used in documents. It is also seen that the respondent has not produced strong material to show that they made real efforts to call the petitioner back. If they were genuinely ready to continue his service, there should have been letters, notices, or some communication records. These are not clearly shown. This creates doubt about their stand. When there is dispute between termination and transfer, the employer must prove that the transfer was genuine and properly communicated. This burden is not fully discharged here.

15. At the same time, it is true that the petitioner also cannot succeed only by making allegations. The Court must balance both sides. But when all facts are seen together, the case of the management does not appear fully convincing. The transfer order, the alleged refusal, the lack of service proof, the change in salary, and the financial situation of the company all together create doubt. In such situation, the benefit should go to the employee, because the employer had control over records.

16. Therefore, on overall consideration, it appears that the transfer order is not proved in a proper legal manner. The respondent has not shown that the petitioner was given a real and fair opportunity to join at Ambad, Jalna. It also does not appear that the petitioner knowingly refused such opportunity. The situation instead shows that the petitioner was kept out of service while showing it as a transfer. Hence, the stand of the respondent that there was no termination cannot be accepted.

17. In service matters, the Court has to see the real effect and not only the form. Here, even if it is shown as transfer, the effect was that the petitioner lost his employment. Therefore, it amounts to termination in substance. For these reasons, the challenge raised by the petitioner deserves to be accepted. The award passed by the Labour Court cannot be sustained, as it does not properly deal with these important aspects. The petition, therefore, succeeds on the basis of the material available on record.

18. So far as the question of back wages is concerned, this aspect requires separate and careful consideration. In the present case,

the petitioner has, in his cross examination, accepted the suggestion that he has no material to show that he made efforts to secure employment from 1 November 2015 onwards. Further, the petitioner himself has stated that he was working as a daily wage labourer and was also selling vegetables during the said period. This statement shows that he was not completely without income. Though such work may not be stable or comparable to his earlier employment, it still indicates that he had some means of earning and was not wholly idle.

19. In such situation, it would be appropriate to award partial back wages, so as to balance the equities between the parties. Accordingly, the claim for back wages is restricted to a reasonable proportion, instead of full back wages, keeping in view the admissions of the petitioner and the overall facts of the case.

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

- (i) The writ petition succeeds and is accordingly allowed;
- (ii) The Judgment and Award dated 13 December 2021 passed by the Labour Court No.3, Pune in Reference (I.D.A.) No. 294 of 2016 is hereby quashed and set aside;
- (iii) It is held that the action of the respondent in discontinuing the services of the petitioner with effect from 1 November 2015 is illegal and unsustainable in law;
- (iv) The respondent is directed to reinstate the petitioner in service, on his original post or an equivalent post, with

continuity of service;

(v) The petitioner shall be entitled to back wages to the extent of 50% from 1 November 2015 till the date of reinstatement;

(vi) The respondent shall comply with the above directions within a period of eight weeks from the date of this order;

(vii) Rule is made absolute in the above terms. No order as to costs.

(AMIT BORKAR, J.)