

AGK

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

WRIT PETITION (ST.) NO.27576 OF 2025

Fiat India Automobiles Private Limited,
formerly known as Fiat India Automobiles
Limited, through its authorized representative
Mr. Gautam Bhosale, Age 52 years,
Occupation Service, having office at
B 19 M.I.D.C., Ranjangaon, Taluka Shirur,
Pune

... **Petitioner**

Vs.

Sandeep Bhaskar Patekar,
Age Adult, Occupation Nil
R/at Bhalwani, Taluka Parner,
District Ahmednagar 414 220

... **Respondent**

ATUL
GANESH
KULKARNI

Digitally signed
by ATUL
GANESH
KULKARNI
Date: 2026.04.30
11:50:25 +0530

Mr. Varun Joshi with Mr. Rishabh N. Chaurasia i/by Mr.
Chetan Arvind Alai for the petitioner.

Ms. Seema Chopda with Mr. T.R. Yadav for the
respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 24, 2026.

PRONOUNCED ON : APRIL 30, 2026

JUDGMENT:

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner calls in question the legality, propriety, and correctness of the judgment and Award

dated 27 March 2025 rendered by the Labour Court in Reference (IDA) No. 33 of 2016. By the said Award, the Labour Court has held that the termination of the respondent's services is illegal and unsustainable in law, and has consequently directed reinstatement of the respondent with continuity of service and 50% back wages together with all consequential benefits. It has further been directed that the said monetary benefits be paid within a period of two months from the date of publication of the Award, failing which the petitioner shall be liable to pay interest at the rate of 9% per annum on the outstanding dues.

2. The factual matrix giving rise to the present writ petition, as set out by the petitioner, is that the respondent was employed as an Associate Team Member with effect from 5 June 2009. It is the case of the petitioner that the respondent remained continuously absent from duty without obtaining leave, and without assigning any sufficient or satisfactory cause, from 21 November 2013 onwards. In view thereof, the petitioner addressed a communication dated 9 January 2014 to the respondent, calling upon him to resume duties forthwith and to furnish a written explanation within 48 hours from the receipt of the said communication. The said letter was dispatched to the respondent at his last known residential address as available in the company's records. However, the same was returned by the postal authorities with the endorsement that the addressee was not available at the said address and was untraceable, and therefore the letter was returned to the sender. Thereafter, the petitioner issued a further communication dated 7 April 2014 by Registered Post

Acknowledgment Due, informing the respondent that his continued unauthorized absence from 21 November 2013 constituted serious misconduct under Clause 25(5) of the Certified Standing Orders applicable to his category of employment, rendering him liable for disciplinary action. It was also intimated that such prolonged absence was adversely affecting the day-to-day functioning of the department and that he should immediately report for duty. The said communication was duly served upon the respondent, as it was not returned undelivered. In response thereto, the petitioner received a reply purportedly sent by the respondent. However, upon verification of the signature appearing on the said communication with the specimen signatures available in the company's records, it was found that the same did not tally and appeared to be forged. In these circumstances, the petitioner did not take cognizance of the said reply.

3. The petitioner thereafter issued yet another communication dated 7 January 2015 through Speed Post, once again calling upon the respondent to immediately resume duties. In the said communication, it was specifically highlighted that the respondent occupied a crucial position in the department and that his continued unauthorized absence was seriously hampering the functioning of the department. Despite the aforesaid communication, the respondent did not report for duty. Instead, the petitioner received a letter dated 14 January 2015, wherein the respondent informed the company that he, along with his parents, had been arrested by the police in connection with the alleged suicide of his wife. It was further stated that he and his

parents were in magisterial custody, that the criminal case was pending for final hearing, and that he expected the matter to be concluded within approximately two months, upon which he would resume duties in the event of his acquittal.

4. Upon consideration of the aforesaid circumstances, Mr. Sandeep Kokil, General Manager (HR), who was also the Manager under the Certified Standing Orders, examined the entire matter in detail. Upon such examination, it was concluded that the respondent's contention that he would resume duties upon acquittal could not be accepted, particularly in view of the uncertainty regarding the duration of his custody and the outcome of the criminal proceedings. In these circumstances, the petitioner proceeded to issue a communication dated 20 February 2015 terminating the respondent's services. Along with the said communication, the petitioner enclosed manager's note setting out reasons for termination, a demand draft for an amount of Rs. 1,09,468/- towards retrenchment compensation, one month's wages and other dues, as well as a gratuity claim form.

5. Subsequently, by communication dated 2 January 2016, the Additional Commissioner of Labour referred the industrial dispute for adjudication to the Labour Court at Pune. Pursuant thereto, the respondent entered appearance and filed his statement of claim before the Labour Court. The petitioner also appeared in the said proceedings and filed its written statement in response to the claim advanced by the respondent.

6. Upon hearing both sides at length and upon consideration of the material placed on record, the Labour Court at Pune, by its Award dated 27 March 2025 in Reference (IDA) No. 33 of 2016, came to the conclusion that the termination of the respondent's services by communication dated 20 February 2015 was illegal. Accordingly, the Labour Court directed reinstatement of the respondent with continuity of service and payment of 50% back wages along with consequential benefits, to be complied with within two months from the date of publication of the Award, failing which interest at the rate of 9% per annum would be payable on the outstanding dues. Being aggrieved thereby, the petitioner has approached this Court by way of the present writ petition.

7. Mr. Varun Joshi, learned Advocate appearing for the petitioner, submits that the Labour Court itself records a categorical finding that the respondent-workman remained in judicial custody from 21 November 2013 until 30 November 2015, resulting in a continuous and uninterrupted absence exceeding two years. Notwithstanding such admitted position, the Labour Court proceeds to observe that the respondent was compelled to remain in custody for no fault attributable to him, thereby shifting the entire causative responsibility to external circumstances and effectively absolving the workman of any accountability. It is submitted that such reasoning overlooks the material aspect that at no point of time did the respondent submit any leave application or furnish any credible and authenticated intimation explaining his absence. No contemporaneous communication duly proved in

accordance with law was placed on record to justify such prolonged absence. Despite this, the Labour Court proceeds to hold the termination as illegal and grants reinstatement with back wages on considerations which are essentially sympathetic in nature. According to the learned counsel, such an approach discloses an error of law apparent on the face of the record, inasmuch as judicial discretion has been exercised in disregard of settled legal principles. It is further contended that the Labour Court erroneously equated prolonged, uncommunicated absence arising out of incarceration with a situation of involuntary absence devoid of fault, and thereby mischaracterized the termination as retrenchment so as to attract the provisions of Section 25F and Rule 81 of the Industrial Disputes Act and the Rules framed thereunder. This, it is urged, ignores the operational prejudice caused to the employer due to complete lack of communication and disruption of workforce continuity, and also overlooks the settled position that even involuntary absence, if indefinite and unreported, may constitute a valid ground for termination. The impugned Award, therefore, is liable to be interfered with in exercise of writ jurisdiction.

8. The learned Advocate further submits that the Labour Court has committed a manifest error of law in holding that the workman had informed the employer of his incarceration on the basis of two photocopied letters which neither bear proof of service nor contain authenticated signatures. By placing reliance on such documents, the Labour Court has concluded that there was no fault on the part of the workman in remaining absent. It is

contended that such reasoning conflates the fact of custody with the statutory requirement of sanctioned leave. Mere incarceration does not, in law, confer an unfettered right upon an employee to remain absent without complying with the prescribed procedure for obtaining leave. An unauthenticated photocopy cannot be treated as valid intimation under the Certified Standing Orders. By accepting such documents as sufficient communication and by condoning an unbroken absence of more than two years, the Labour Court has ignored the admitted position that no leave application was ever filed and that the procedural requirements governing absence were not complied with. This misappreciation of evidence and misapplication of the statutory framework, it is submitted, vitiates the Award and warrants interference.

9. It is further submitted that while the Labour Court accepts the petitioner's case that the workman was dismissed on account of misconduct in the nature of absenteeism, it proceeds to invalidate such dismissal solely on the ground that no charge-sheet was issued, and no domestic inquiry was conducted. According to the learned counsel, such reasoning is legally untenable. The termination letter dated 20 February 2015 clearly records continuous and unauthorized absence as the basis for termination. Additionally, by way of abundant caution, the employer complied with the requirements of Section 25F of the Industrial Disputes Act by issuing notice and paying retrenchment compensation. It is also pointed out that in the written statement, the petitioner had expressly reserved its right to establish misconduct by leading evidence before the Labour Court. The Labour Court has, however,

placed reliance upon the decision in *Krushnakant B. Parmar v. Union of India*, reported in (2012) 3 SCC 178, to hold that the absence of the workman was not willful and hence excusable. It is submitted that such reliance is misplaced, as the said decision pertained to short-term absence arising out of compelling circumstances such as illness or accident, and not to a case of prolonged, indefinite and uncommunicated absence extending over two years. In the present case, the respondent neither applied for leave nor complied with the Standing Orders governing absence. By treating such conduct as excusable, the Labour Court has misconstrued the ratio of the said judgment and thereby committed an error of law apparent on the face of the record.

10. The learned counsel submits that the impugned Award is further vitiated inasmuch as it disregards the pleadings of the petitioner and accords undue importance to procedural technicalities. It is pointed out that in its written statement at Exhibit C-3, the petitioner had expressly reserved its right to prove misconduct of unauthorized absence, and had also moved an application at Exhibit C-13 seeking framing of an issue in respect of the workman's continuous absence from 21 November 2013 to 20 February 2015. Despite this, the Labour Court has held that since the petitioner did not specifically seek framing of an issue in a particular form, it must be deemed to have abandoned its defence. Such reasoning, it is submitted, is contrary to settled principles that issues must be construed in light of pleadings and not in a narrow or technical manner. The Labour Court has relied upon the judgment in *Karnataka State Road Transport Corporation*

v. Lakshmiddevamma , (2001) 5 SCC 433 to support its conclusion, however, according to the learned counsel, the said judgment does not lay down any requirement that a party must seek express permission in a particular form to prove misconduct. By refusing to consider the petitioner's defence and by adopting an unduly restrictive approach to the issues framed, the Labour Court has denied the petitioner a fair opportunity of hearing and has thereby committed an error apparent on the face of the record.

11. It is further submitted that the impugned Award proceeds on an erroneous premise by treating a termination founded upon misconduct as a case of retrenchment under Section 25F of the Industrial Disputes Act. Such an approach, according to the learned counsel, is fundamentally flawed, as it misconstrues the nature of the employer's action. The provisions of Section 25F are applicable to cases of retrenchment arising out of surplus labour or economic reasons, and do not govern cases of termination for disciplinary misconduct. The definition of retrenchment expressly excludes termination on account of misconduct. Therefore, there is no statutory requirement to conduct a retrenchment-type inquiry or to comply with procedural requirements applicable to retrenchment in cases of dismissal for unauthorized absence. It is further submitted that even assuming that Section 25F were applicable, the petitioner had, by way of abundant caution, complied with its requirements by enclosing a demand draft of Rs. 1,09,468/- along with the termination letter dated 20 February 2015, representing one month's wages and retrenchment compensation. The insistence of the Labour Court on further

procedural compliance is thus contrary to law. It is contended that continuous unauthorized absence for a prolonged period constitutes grave misconduct under the Certified Standing Orders, and once such misconduct is established, termination is legally justified. The Award, therefore, being based on a misapplication of statutory provisions and settled principles, is perverse and liable to be set aside.

12. In support of the aforesaid submissions, the learned Advocate for the petitioner has placed reliance upon the judgment of the Supreme Court in *State of U.P. and Others v. Ashok Kumar Singh and Another*, reported in (1996) 1 SCC 302, wherein the Supreme Court held that prolonged absence, such as absence for 251 days in one year and 93 days in another year, constitutes grave misconduct. It is submitted that the respondent in the said case belonged to a disciplined force, and the principle laid down therein underscores the seriousness with which prolonged absenteeism is to be viewed.

13. The learned counsel has further relied upon the judgment of the Supreme Court in *State of Uttarakhand and Others v. Sureshwati*, reported in (2021) 3 SCC 108, to contend that even in cases where no domestic inquiry has been conducted prior to dismissal, it is open to the employer to justify the action before the Labour Court by leading evidence. It is submitted that the entire matter would remain open before the adjudicating authority, which is empowered to assess the evidence adduced by the parties and determine whether the dismissal was justified. On this basis, it is urged that the impugned Award is unsustainable and liable to be

set aside.

14. Per contra, Ms. Chopda, learned Advocate appearing for the respondent, submits that the absenteeism in question was not willful. It is contended that the respondent was acquitted of the criminal charges on 30 January 2015, and thereafter he attempted to resume duties on 10 February 2015, but was not permitted to do so by the petitioner. It is further submitted that shortly thereafter, on 20 February 2015, his services came to be terminated. According to the learned counsel, during the period of absence, the respondent had addressed communications to the employer explaining the reasons for his absence. It is thus contended that termination of service after acquittal in the criminal proceedings was unjustified. It is also urged that while effecting retrenchment, the petitioner failed to comply with Rule 81, which mandates that the last person employed should be retrenched first. It is further submitted that the respondent had initially joined as a temporary employee in the year 2006 and was made permanent in the year 2009, and had thus rendered nearly ten years of service at the time of termination.

15. In response to the contention raised on behalf of the petitioner regarding the reservation of right to prove misconduct, the learned counsel for the respondent submits that although such a plea was taken in the written statement, there is no dispute with regard to the factum of absence. It is contended that the only question which arises for consideration is whether such absence was willful or not. For determination of this issue, according to the learned counsel, it was not necessary to grant an opportunity to

the petitioner to lead further evidence under Section 11A of the Industrial Disputes Act, 1947. On this basis, it is submitted that the writ petition does not merit interference and is liable to be dismissed.

16. In support of the aforesaid submissions, reliance is placed on the judgment of a Co-ordinate Bench of this Court in *Maharashtra State Road Transport Corporation v. Alfred James Gamare*, reported in 2009 (2) CLR 582, wherein, in a case involving termination on the ground of absenteeism, it was held that where the employee remained absent on account of incarceration in connection with criminal proceedings and was subsequently acquitted, such absence could be treated as arising from circumstances beyond his control.

17. Further reliance is placed on the judgment of the Supreme Court in *Krushnakant B. Parmar v. Union of India and Another*, reported in (2012) 3 SCC 178, to contend that it is incumbent upon the employer to establish that the absence was willful, and in the absence of such a finding, the absence cannot be treated as misconduct warranting disciplinary action.

REASONS AND ANALYSIS:

18. I have considered the rival submissions of the learned advocates and also the entire record placed before this Court. The real question is whether such absence was willful and amounting to misconduct, and whether the petitioner was given proper opportunity to prove its case in the manner known to law.

19. The petitioner has made grievance that the Labour Court has decided the matter without allowing the employer to lead evidence, even though in the written statement there was clear reservation of right to justify the termination and to prove misconduct. This submission touches the root of fair adjudication. It is correct that an employer cannot remain silent during proceedings and thereafter seek indulgence as a matter of right once the matter is concluded. When in the pleadings the employer has stated that it intends to prove misconduct, and when no domestic inquiry was held before passing the order of termination, then the Labour Court is expected to examine whether an opportunity should be granted to lead evidence so that the dispute is decided on real merits. The record shows that the petitioner's defence was based on unauthorized absence. It was the basis on which the termination was effected. Therefore, if such defence goes to the foundation of the action, then to shut out evidence at the initial stage results in denial of fair opportunity. In such situation, the decision may suffer because the defence was not properly examined. That is why this Court finds that refusal to permit evidence requires consideration.

20. The respondent has argued that he was in judicial custody and therefore his absence cannot be said to be willful. A person who is in jail is not in same position as a person who chooses to remain absent from duty. Therefore, absence arising from custody stands on different footing than ordinary absenteeism. However, this does not conclude the matter. Even in such situation, certain minimum expectations remain. The employer is entitled to know

whether the employee has informed about such custody, whether any leave was applied for, whether there was any effort to communicate the situation, and whether the absence was unavoidable. The Labour Court has taken view that the respondent had sent letters informing about his situation. The petitioner disputes these letters and says they are not proved, not served, and signatures are doubtful. This creates a factual dispute. Such dispute cannot be resolved merely on assumption. It requires proof. Evidence becomes necessary. When one party says communication was made and the other says it was not, the Court must allow both to establish their case. By not permitting such exercise, the Labour Court has left the matter partly examined.

21. The respondent has relied on settled principle that absence does not amount to misconduct unless it is willful. There is no dispute on this proposition. But application of that principle depends entirely on facts. The Court must first find whether the absence was without justification. In present case, the employer says that the absence was without proper leave. The respondent says that it was because of custody and later acquittal. These are two competing versions. The Labour Court has accepted the respondent's version. However, it has done so without allowing the employer to lead full evidence in support of its case. When the issue goes to root, namely whether absence was willful or not, then both parties must be allowed to place their full case.

22. The submission of the respondent that no further evidence is required because absence is admitted, does not satisfy this Court. Admission of absence is only one part of the matter. The

consequence of such absence depends on surrounding facts and compliance with service rules. A person may be absent, but still not guilty of misconduct if absence is justified. On the other hand, absence may become misconduct if it is without proper cause. Therefore, mere admission of absence does not conclude the issue. Under Section 11A, the Labour Court has wide power to examine the justification of dismissal. But such power must be exercised on proper material. Where the factual controversy is not fully resolved, the Court must allow parties to lead evidence. In present case, the petitioner's defence of unauthorized absence was not tested by full evidence. Therefore, interest of justice requires that such opportunity be granted. Only then the Court can arrive at proper conclusion.

23. I am also conscious of the respondent's case that after acquittal he attempted to join duty and was not allowed, and thereafter his services were terminated. This again shows that there are factual issues which need evidence. At this stage, it would not be proper for this Court to finally decide such disputed questions without evidence. The safer course is to permit both sides to establish their case before the Labour Court. The petitioner can attempt to prove misconduct. The respondent can attempt to show that absence was not willful and that he had taken steps to resume duty. Only after such exercise, the matter can be decided in accordance with law.

24. The contention that the Labour Court was justified in closing the matter because specific issue was not framed in exact words also does not appeal to me. Law of pleadings is meant to advance

justice, not to defeat it. If the written statement shows the stand of the employer, and if it indicates intention to justify termination on ground of misconduct, then absence of perfect language or precise framing should not result in denial of opportunity. At the same time, it must be ensured that the workman is not taken by surprise. In my view, remand with direction to permit evidence achieves such balance.

25. For these reasons, I am of the view that the course adopted by the Labour Court was not in accordance with settled principles. The matter requires reconsideration after permitting parties to lead evidence.

26. In view of the foregoing discussion, the following order is passed:

- (i) The writ petition is partly allowed;
- (ii) The judgment and Award dated 27 March 2025 passed by the Labour Court, Pune in Reference (IDA) No. 33 of 2016 is quashed and set aside;
- (iii) The said Reference is remanded to the Labour Court, Pune for fresh adjudication;
- (iv) The Labour Court shall permit the petitioner-employer to lead evidence in support of the order of termination and to prove the alleged misconduct of unauthorized absence. The respondent-workman shall also be at liberty to lead evidence in rebuttal and in support of his case;

(v) The Labour Court shall thereafter decide the Reference afresh on its own merits, in accordance with law and particularly in light of the provisions of Section 11A of the Industrial Disputes Act, 1947, without being influenced by any observations made in this judgment;

(vi) The parties shall appear before the Labour Court on a date to be fixed by that Court. The Labour Court shall make an endeavour to dispose of the Reference as expeditiously as possible and preferably within a period of six months from the date of first appearance of the parties;

(vii) All contentions of both parties are kept open;

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

(AMIT BORKAR, J.)