

Shabnoor

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

WRIT PETITION NO. 6784 OF 2013

Sugandha Sunil More,

Age : Adult, Occ.: Nil,

R/at : Dattanagar, Ambegaon Bk.,

near Telco Society, near Shankar,

Pune - 411 046.

... **Petitioner**

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V/s.

Bharati Vidyapeeth Ladies Hostel,

Dhankawadi, Pune - 411 042.

... **Respondent**

**WITH
WRIT PETITION NO. 6789 OF 2013**

Suman Dnyaneshwar Gaikwad,

Age : Adult, Occ.: Nil, R/at : S. No. 46,

Dattanagar, Ambegaon Bk., Jambhulwadi,

Near Telco Society, Post – Katraj, Tal : Haveli,

Pune – 411 046.

... **Petitioner**

V/s.

Bharati Vidyapeeth Ladies Hostel,

Dhankawadi, Pune - 411 042.

... **Respondent**

**WITH
WRIT PETITION NO. 6785 OF 2013**

Lata Suresh Usulkar,

... **Petitioner**

Age : Adult, Occ.: Nil, R/at : Room No. 3,

Dattanagar, Ambegaon, Deshmukh Chawl,

Pune – 411 046.

V/s.

Bharati Vidyapeeth Ladies Hostel,
Dhankawadi, Pune - 411 042.

... Respondent

WITH
WRIT PETITION NO. 6787 OF 2013

Shalini Dattatraya Kalokhe,
Age : Adult, Occ.: Nil, R/at : Rajvilas
Building, Plot No. 11, Ambegaon, back to
Bharti Vidyapeeth, Pune – 4110146

... Petitioner

V/s.

Bharati Vidyapeeth Ladies Hostel,
Dhankawadi, Pune - 411 042.

... Respondent

WITH
WRIT PETITION NO. 6790 OF 2013

Shobha Laxman Kamthe,
(Since Deceased), Age : Adult, Occ.: Nil,
R/at : S. No. 3-21, Govind Patil Nagar,
Parande Bhau Chawl, Near Shantadurga
Provision Stores, Room No. 385, Dhankavadi,
Pune - 411 042.

... Petitioner

1(a) Pradip Laxman Kamathe,
Age 38 years, Occ. : Service,
R/at : H. No. 385, S. No. 3/21,
Govindrao Patil Nagar, Parande Bhau
Chawl, Dhankawadi Pune – 411 043.

1(b) Pallavi Jayesh Pandit,
Age 35 years, Occ. : Service,
R/at : H. No. 385, S. No. 3/21,

Govindrao Patil Nagar, Parande Bhau
Chawl, Dhankawadi Pune – 411 043.

V/s.

Bharati Vidyapeeth Ladies Hostel,
Dhankawadi, Pune - 411 042.

... Respondent

WITH
WRIT PETITION NO. 12817 OF 2015

Ranjana Narayan Sakhare,
Age : Adult, Occ.: Nil, R/at : Ankush Kadam
Chawl, Grampanchayat Opp. Katraj Gaon,
Pune.

... Petitioner

V/s.

Bharati Vidyapeeth Ladies Hostel,
Dhankawadi, Pune - 411 042.

... Respondent

Mr. Vikas B. Tapkir for the Petitioner a/w Mr. Parth
Deshpande, for the Petitioner in all writ petitions.

Mr. Mahindra B. Deshmukh for the Respondent in all
writ petitions.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 7, 2026

PRONOUNCED ON : MARCH 12, 2026

JUDGMENT:

1. The present writ petitions arise out of similar set of facts and evidence. As the issues involved are similar and arise from the similar, they are being decided together by this common judgment.

In the interest of convenience, facts in Writ petition No. 6790 of 2013 are treated as lead petition.

2. These writ petitions have been instituted under Article 227 of the Constitution of India challenging the award dated 2 July 2011 passed by the Presiding Officer, First Labour Court, Pune in Reference (IDA) No.620 of 2004. The circumstances giving rise to the present proceedings may be briefly stated. A reference came to be made by the Deputy Commissioner of Labour, Pune under Section 10(1)(c) read with Section 12(5) of the Industrial Disputes Act, 1947. By the said reference, adjudication was sought on the following demand: “Whether Smt. Shobha Laxman Kamthe is entitled to reinstatement in service with continuity and with full back wages for the intervening idle period with effect from 30 November 2003.”

3. The petitioner filed her statement of claim at Exhibit 4. It was stated that she had been working as a sweeper for approximately eleven years and that her last drawn wages were Rs.1,500/- per month. According to her, she was assigned duties in the ladies’ hostel known as “A” Block, where she was required to clean the rooms, passages, toilets, and bathrooms. She further asserted that such work was carried out under the instructions of the Chief Rector, Smt. Alka Shinde, and that she was also required to perform other duties as directed by the concerned officers. The petitioner further contended that she was paid wages below the prescribed minimum wages and that several statutory benefits were denied to her. In order to pursue these grievances, she joined the Pune Majdoor Sabha. It was stated that the Union addressed a

letter dated 12 April 2002 raising demands relating to payment of minimum wages and other labour related issues. Though there was a revision of wages in July 2002, the petitioner alleged that even thereafter the wages paid to her were below the minimum wages prescribed under law. According to the petitioner, after she associated herself with the Union and raised the said demands, she was subjected to harassment by the management. She therefore filed Complaint (ULP) No.12 of 2002 before the Industrial Court. The Industrial Court granted an interim order on 9 January 2003 restraining the management from taking any adverse action against her. However, the said complaint ultimately came to be dismissed on 29 November 2003 on the ground that the Industrial Court lacked jurisdiction to entertain the matter.

4. The petitioner further asserted that on 30 November 2003 she reported for duty at about 8:00 a.m., but the Chief Rector, Smt. Alka Shinde, did not permit her to resume work and orally terminated her services. It was alleged that such termination was effected without payment of retrenchment compensation and in breach of the provisions of Section 25F of the Industrial Disputes Act. It was also stated that no domestic enquiry was conducted, despite intervention by the Deputy Labour Commissioner. On these grounds, the petitioner sought reinstatement in service with continuity and full back wages.

5. The respondent filed its written statement at Exhibit 8 and denied all the allegations made by the petitioner. It was specifically contended that there was no relationship of employer and employee between the parties and that the petitioner had never

been formally employed by the respondent institution. According to the respondent, the hostel facility was managed by the students themselves and any arrangement for engaging sweepers was made merely for convenience and not as part of any formal employment by the respondent. The respondent further relied upon earlier proceedings initiated under Sections 28(1) and 30(2) of the MRTU and PULP Act before the Industrial Court, Pune. In those proceedings, being Complaints (ULP) Nos.7 of 2003 to 17 of 2003, the Industrial Court had dismissed the claims on 29 November 2003. The respondent contended that the said decision amounted to a final adjudication on the issues raised by the petitioner. On the basis of the pleadings of the parties, the learned Labour Court framed the following issues for determination:

- (i) Whether there existed a relationship of employer and employee between the petitioner and the respondent.
- (ii) Whether the petitioner had been illegally terminated from service.
- (iii) Whether the petitioner was entitled to the reliefs claimed in the reference.

6. In support of her case, the petitioner examined Dr. Anita Sardar Patil at Exhibit 20 and also entered the witness box herself at Exhibit 12. Both sides placed several documents on record in support of their respective contentions. Upon considering the rival submissions advanced on behalf of the parties and the evidence available on record, the learned Presiding Officer, First Labour Court, Pune delivered the judgment and award dated 02 July

2011, whereby the reference raised at the instance of the petitioner came to be rejected.

7. Mr. Tapkir, learned Advocate appearing on behalf of the petitioner, invited attention of this Court to the impugned judgment and submitted that during the course of the proceedings the petitioner had sought production of certain documents from the respondent. These included the vouchers reflecting payment of salary and the attendance register, which according to the petitioner were relevant for establishing the existence of a relationship of employer and employee between the parties. It was submitted that the respondent employer denied the existence of such relationship and further took a stand that the documents sought by the petitioner were not in existence. On the basis of this stand, the Trial Court initially rejected the application filed by the petitioner seeking a direction to the respondent to produce the said documents. It was further submitted that thereafter the petitioner filed an application seeking permission to lead secondary evidence on the ground that the original documents were not in her custody and were within the control of the respondent. The Trial Court allowed the said application. Pursuant thereto, the petitioner produced photo-stat copies of the muster rolls pertaining to the periods from August 1994 to December 1994 and from January 1995 to December 1995. The petitioner also produced on record a salary voucher dated 01 November 1996 along with a duty list. According to the petitioner, these documents were proved in evidence during the course of the proceedings before the Labour Court. Learned Advocate for the

petitioner further contended that in view of the specific defence taken by the respondent denying the relationship of employer and employee, the Labour Court ought to have drawn an adverse inference against the respondent employer for failure to produce the relevant records sought by the petitioner. It was submitted that such documents were in the exclusive possession and control of the employer. In support of this contention, reliance was placed upon the judgment of the Supreme Court in *R.M. Yellatti v. Assistant Executive Engineer, reported in (2006) 1 SCC 106*.

8. It was also submitted on behalf of the petitioner that during the pendency of the proceedings the petitioner has already attained the age of superannuation. In such circumstances, it was contended that reinstatement is no longer a practical relief. According to the petitioner, she is therefore entitled to appropriate monetary compensation in lieu of reinstatement and continuity of service, and an order directing payment of such compensation deserves to be passed in her favour.

9. Per contra, Mr. Deshmukh, learned Advocate appearing on behalf of the respondent employer, opposed the petition and submitted that the respondent had never employed the petitioner at any point of time. It was contended that in the ladies' hostel the students themselves used to make informal arrangements for engaging domestic help for cleaning purposes. According to the respondent, any services rendered by the petitioner, if at all, were not under the supervision, control, or employment of the respondent institution. Learned Advocate for the respondent further submitted that the petitioner has failed to place on record

any cogent evidence to demonstrate that she had rendered continuous service for a period of not less than one year as contemplated under Section 25B of the Industrial Disputes Act. It was also contended that the petitioner has not offered any satisfactory explanation as to how she came into possession of the muster rolls and salary vouchers which were sought to be relied upon as secondary evidence. On the basis of these submissions, it was contended that no relationship of employer and employee ever existed between the petitioner and the respondent. It was further submitted that in the absence of proof of continuous service as required under Section 25B of the Industrial Disputes Act, the petitioner cannot claim the protection of the provisions relating to retrenchment. On these grounds, learned Advocate for the respondent prayed that the present petition deserves to be dismissed.

REASONS AND ANALYSIS:

10. I have considered the record and the submissions. The facts set out by the parties are clear from the pleadings and evidence. The issue is whether the petitioner was in employment with the respondent and whether she was wrongly deprived of service and benefits.

11. In order to appreciate the submissions of the parties, it becomes necessary to examine the legal principle explained by the Supreme Court in *Anil Mithra v. Sree Sankaracharya University of Sanskrit (2022) 17 SCC 505*. The judgment explains the meaning of continuous service under Section 25B of the Industrial Disputes

Act and the mandatory requirements contained in Section 25F before termination of a workman.

12. Section 25B explains when a workman is said to be in continuous service. If a worker is employed without interruption for a certain period, he is considered to be in continuous service. Even if there are interruptions due to sickness, authorised leave, accident, strike, lock-out or temporary stoppage of work, such interruptions do not break the continuity of service so long as they are not caused by the fault of the workman. Even if strict continuous service is not shown, the Act creates a legal assumption. If the workman has worked for at least 240 days during the twelve months immediately preceding the date of termination, the workman is treated as having completed one year of continuous service.

13. Once such continuous service of one year is established, Section 25F becomes applicable. This section places certain mandatory conditions on the employer before terminating the services of such a workman. First, the employer must give one month written notice stating the reasons for termination, or pay wages in lieu of that notice. Second, the employer must pay retrenchment compensation equivalent to fifteen days average wages for every completed year of service. These two conditions must be satisfied before the termination takes effect.

14. The Supreme Court in the above decision has clearly explained that these requirements are mandatory in nature. If the employer terminates the service of a workman who has completed

240 days of work in the preceding year, and does so without complying with Section 25F, the termination becomes illegal from the very beginning. In law such termination cannot stand. However, the Supreme Court has also clarified that even if Section 25F is violated, reinstatement with full back wages does not automatically follow in every case. The relief must depend on the facts of each case. The Court may grant reinstatement, or compensation, or some other appropriate relief depending upon circumstances such as length of service, nature of employment, delay in litigation, or superannuation of the workman.

15. Therefore, the main issue becomes one of proof. The Court must see whether the material on record reasonably establishes that the petitioner had in fact worked for 240 days in the relevant year. If that requirement is not proved, the protection of Section 25F would not arise. But if the Court finds that such service is established on the basis of muster rolls, salary vouchers, and oral testimony, then the termination without notice and retrenchment compensation would be contrary to law.

16. Coming to the documentary evidence, it is seen that the petitioner had initially sought production of certain records from the respondent. These included the attendance registers and salary payment vouchers which, according to the petitioner, would show that she was working in the establishment for several years. The learned Advocate appearing for the petitioner pressed this request before the Labour Court and submitted that these documents were necessary to establish the employer–employee relationship. The respondent opposed this request and contended that no such

records existed with them. On that basis the Labour Court, at the initial stage, rejected the petitioner's request seeking a direction for production of those documents.

17. After the said rejection, the petitioner filed an application seeking permission to lead secondary evidence. The ground taken was that the original records were not in her custody and were likely to be with the respondent. The Labour Court allowed this request. Thereafter the petitioner produced photocopies of certain muster rolls covering the period from August 1994 to December 1994 and another set from January 1995 to December 1995. In addition, she also produced a salary voucher dated 01 November 1996 and a duty list relating to work in the hostel. These documents were marked in evidence and the petitioner as well as another witness entered the witness box and deposed in support of the documents.

18. In light of the rival submissions, certain legal questions arise for determination. The first question is whether the secondary documents produced by the petitioner were rightly admitted in evidence and whether they can be relied upon. The second question is whether the evidence on record shows that the petitioner had rendered continuous service for at least one year so as to attract the protection available to a workman under the Industrial Disputes Act. The third question is whether the respondent can be regarded as the employer exercising supervision and control over the petitioner's work, and if so whether the termination of service was effected without complying with the statutory requirements of Section 25F.

19. With regard to the first question, the Labour Court exercised its discretion to allow the petitioner to produce secondary evidence. The court recorded that the original documents were not in the custody of the petitioner. The respondent had taken a stand that such records were not available. In such circumstances the law permits the court to accept secondary evidence where the original documents are not accessible to the party relying upon them. The petitioner produced photocopies of muster rolls and other documents and supported them by oral testimony. The Labour Court therefore accepted these documents as proved for the purpose of the case.

20. It is true that the respondent has questioned the source from which these documents were obtained. The petitioner has not placed on record a detailed explanation regarding the manner in which the copies came into her possession. However, absence of a perfect explanation does not automatically render the documents entirely worthless. The muster rolls relate to different time periods in consecutive years and the salary voucher corresponds to a later period. When these documents are read together with the oral testimony of the petitioner describing the nature of her duties and the length of her service, they indicate that she had been regularly attending work and receiving payment for the same. It is also significant that the respondent has not produced any attendance register, wage record or other material to contradict these documents. The absence of such records on the side of the respondent assumes importance.

21. In these circumstances the Labour Court was justified in drawing an adverse inference against the respondent. When relevant records are expected to be in the possession of the employer and yet are not produced, the court is entitled to presume that the records, if produced, would not support the employer's case. The respondent has denied the relationship of employment and at the same time resisted the production of records which could clarify the matter. Therefore on a preponderance of probabilities it does lend support to the petitioner's version.

22. The next question concerns the requirement of continuous service under Section 25B of the Industrial Disputes Act. For a workman to claim protection against retrenchment, it must be shown that the workman had completed at least one year of continuous service. This usually means that the workman must have worked for at least 240 days in the twelve months preceding the termination. In the present case, the muster rolls covering two different periods and the salary voucher together suggest that the petitioner was engaged in work for a substantial duration. Her testimony that she worked for many years is also supported by the evidence of another witness. The respondent has not produced any records to contradict this version. Considering the available evidence, it appears more probable that the petitioner had indeed completed the required period of service.

23. The third issue relates to the existence of the employer-employee relationship. The petitioner has stated that she was working under the instructions of the Chief Rector and other

officers. She has described the nature of the work assigned to her and the place where she performed those duties. The element of control and supervision is an important indicator of an employment relationship. The respondent has contended that the students themselves arranged cleaning services. However, the evidence on record suggests that the petitioner's work was connected with the functioning of the hostel and was carried out under the directions of the authorities managing the hostel. The documents produced and the testimony given support the conclusion that her work was regular and supervised.

24. The respondent has relied on the dismissal of the earlier complaint by the Industrial Court for want of jurisdiction. That dismissal only indicates that the Industrial Court found that it did not have jurisdiction under the MRTU and PULP Act. It did not examine or decide the merits of the employment relationship. Therefore that dismissal cannot prevent the Labour Court from examining the dispute when it was referred under the Industrial Disputes Act.

25. Once it is accepted that the petitioner had rendered the required period of service and that the relationship of employment existed, the question of relief arises. The petitioner had initially sought reinstatement with continuity of service and full back wages. However, during the pendency of the litigation she has reached the age of superannuation. In such a situation reinstatement is no longer practical because the petitioner is no longer in a position to resume employment. It is well settled that where reinstatement becomes impracticable due to

superannuation, the court may grant monetary compensation in lieu of reinstatement.

26. The petitioner has also claimed full back wages on the basis that her last drawn wages were Rs.1,500/- per month. The respondent has not produced any evidence to show that retrenchment compensation or notice pay under Section 25F was ever paid. When termination is effected without following the statutory procedure, the workman is entitled to appropriate relief. In the present case, the failure of the respondent to demonstrate compliance with Section 25F supports the petitioner's claim for monetary relief.

27. In view of the discussion and reasons recorded in the foregoing paragraphs, the writ petitions are partly allowed.

28. The judgment and award dated 2 July 2011 passed by the Presiding Officer, First Labour Court, Pune in Reference (IDA) Nos.620 of 2004, 626 of 2004, 627 of 2004, 621 of 2004, 628 of 2004 and 619 of 2004 is set aside to the extent it rejects the claim of the petitioner without granting any relief.

29. It is declared that the discontinuation of service of the petitioner with effect from 30 November 2003 was not in compliance with the mandatory requirements of Section 25F of the Industrial Disputes Act, 1947.

30. However, it is noted that during the pendency of the proceedings the petitioner has already attained the age of superannuation. In view of this subsequent development, reinstatement in service is not a practicable relief.

31. Having regard to the length of service stated by the petitioner, the nature of employment, the last drawn wages of Rs.1,500/- per month, and the fact that the termination occurred in the year 2003, this Court finds it appropriate to award monetary compensation in lieu of reinstatement and other consequential benefits.

32. Accordingly, the respondent shall pay to the petitioner a lump sum monetary compensation of Rs.2,00,000/- (Rupees Two Lakhs only) in full and final settlement of the dispute.

33. The aforesaid amount shall be paid to each petitioner within a period of three months from the date of this judgment. In the event of failure to pay the said amount within the stipulated period, the amount shall carry interest at the rate of 6% per annum from the date of this judgment until realization.

34. Rule is made absolute in the above terms. No order as to costs.

(AMIT BORKAR, J.)