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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10839 OF 2012

WITH

CIVIL APPLICATION NO.3 OF 2021

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**Suresh Vishram Sawant,**

Age 63 years, Occupation \_\_

R/at A-202, Nagdevata Apartment,

Gupte Road, Gaodevi Society,

Dombivali (West), Dist. Thane.

... Petitioner

**Vs.**

**Ceat Limited,**

Bhandup (West), Mumbai 400 078

through it's Chief Manager (E.R.)

**Respondent**

Ms. Reshmarani Nathani for the petitioner/applicant.

Mr. Anand Pai with Mr. Netaji Gawade i/by M/s. Sanjay  
Udeshi & Co., for the respondent.

**CORAM : AMIT BORKAR, J.**

**RESERVED ON : FEBRUARY 27, 2026.**

**PRONOUNCED ON : MARCH 6, 2026**

**JUDGMENT:**

1. By the present writ petition, the petitioner challenges the Judgment and Order dated 4 April 2012 passed by the Industrial



Court, Mumbai in Revision Application (ULP) No. 54 of 2009, whereby the revision preferred by the respondent company was allowed, and the order dated 3 February 2009 passed by the Labour Court, Thane in Complaint (ULP) No. 289 of 2002 came to be set aside.

2. The facts giving rise to the present writ petition, in brief, are as follows. The petitioner joined the services of the respondent company as a badli employee on 9 June 1971. He was thereafter appointed as a trainee designated as “Bagger Debagger” on 1 October 1971 and subsequently continued as a temporary employee. The petitioner was placed on probation with effect from 1 April 1972 and was thereafter confirmed as a permanent employee on 1 July 1972 in the post of Curing Operator.

3. In the year 1996, the petitioner was granted two increments and was promoted and transferred from the Mackanal Section to the Curing Department and thereafter to the BOM Section as BOM Operator-A. According to the petitioner, until the period 1996 to 1997, he had not suffered from ailments such as asthma or bronchitis arising out of the working conditions in the respondent company. On 10 July 2001, the respondent company issued a show cause notice alleging that the petitioner had remained absent for 67 days during the year 2000 and for 25 days during the year 2001 on medical grounds. The petitioner submitted his reply on 14 July 2001. Thereafter, by letter dated 1 December 2001, the respondent company granted what was described as a last and final opportunity to improve his health, indicating that in the event of continued ill health, termination of service would follow.



4. On 18 March 2002, the respondent company introduced a Voluntary Retirement Scheme and invited eligible employees to opt for the same. The petitioner submitted an application under the said scheme on 22 March 2002. The last date prescribed for submission of applications under the scheme was 31 May 2002.

5. On 6 June 2002, another show cause notice was issued to the petitioner in respect of leave availed for 74 days during the period from 1 June 2001 to 31 May 2002. The petitioner submitted his reply on 22 June 2002. Thereafter, on 23 July 2002, the respondent company terminated the services of the petitioner with immediate effect, citing continuous ill health, without conducting any domestic enquiry. The petitioner contends that such termination was effected in undue haste and in violation of the principles of natural justice. Along with the termination letter, the petitioner was handed over cheque dated 19 July 2002 bearing No. 617178 for an amount of Rs. 13,520.59. The petitioner accepted the termination letter and the cheque on 24 July 2002 without prejudice to his rights and contentions.

6. On 26 July 2002, the petitioner addressed a communication to the respondent company stating that he had already submitted an application under the Voluntary Retirement Scheme on 18 March 2002 and requested that the same be considered. He further asserted that the polluted atmosphere prevailing in the Curing Department had adversely affected his health and had resulted in ailments such as asthma.



7. On 18 October 2002, the petitioner instituted Complaint (ULP) No. 289 of 2002 before the Labour Court, Thane under Section 28 read with Item No. 1(a), (b), (d), (f) and (g) of Schedule IV of the MRTU and PULP Act, 1971 alleging unfair labour practices on the part of the respondent company.

8. By letter dated 4 May 2004 addressed to the Regional Provident Fund Commissioner for final settlement and withdrawal of provident fund dues, the respondent company stated that the petitioner had resigned from service. By another communication of the same date concerning settlement of monthly family pension, the respondent company informed that the petitioner had opted for voluntary retirement on reduced pension.

9. The Labour Court, Thane, by order dated 3 February 2009, allowed the complaint filed by the petitioner and held that the respondent company had engaged in unfair labour practices falling under Item No. 1(a), (b), (d), (f) and (g) of Schedule IV of the MRTU and PULP Act, 1971.

10. Aggrieved thereby, the respondent company preferred Revision Application (ULP) No. 54 of 2009 before the Industrial Court. By Judgment and Order dated 4 April 2012, the Industrial Court allowed the revision application and set aside the order passed by the Labour Court. It is against the said judgment that the present writ petition has been filed.

11. Ms. Nathani, learned counsel appearing for the petitioner, submitted that the petitioner was employed as BOM Operator in the Curing Department of the respondent company, where heavy



tyre manufacturing work relating to trucks and tractors was carried out. The work involved operation of tyre curing presses and working near hot plates, resulting in exposure to steam, heat, and strong chemical odours causing suffocation and breathing difficulty among employees. It was contended that the working environment in the Curing Department was unhealthy and that the petitioner was not provided with protective equipment such as masks while performing his duties. Learned counsel further submitted that the petitioner did not suffer from ailments such as asthma or bronchitis prior to 1996 to 1997 and that his health deteriorated due to prolonged exposure to heat, rubber, and chemical substances in the workplace. It was argued that the leave availed by the petitioner was supported by medical certificates, which were accepted by the respondent company without objection. Consequently, the absence of the petitioner could not be treated as unauthorized. On these grounds, it was submitted that the writ petition deserves to be allowed.

**12.** Per contra, Mr. Pai, learned counsel appearing for the respondent company, submitted that the petitioner's services were terminated on account of his continuous inability to attend work due to ill health. Reliance was placed on the decision in *Ceat Limited v. S.D. Sawant and Others, 1999 (3) L.L.N. 1182*, to contend that termination on the ground of prolonged absence owing to ill health is legally permissible, particularly where warnings have been issued and no improvement is observed. It was further submitted that the petitioner had remained absent for substantial periods, as noted by the Labour Court itself, and that



the total leave availed by the petitioner between 1994 and June 2002 amounted to 671 days on various grounds. On this basis, dismissal of the writ petition was sought.

**RASONS AND ANALYSIS:**

13. The first aspect which needs to be examined is the real nature of the termination. It must be seen whether the termination was truly on the ground of continued ill health. The material placed on record shows that the employer had issued show cause notices referring to the petitioner remaining absent for long periods on medical grounds. The last communication before the termination also refers to the petitioner's health condition and the difficulty faced by the employer due to repeated absence from work. The termination letter itself clearly records that the services were brought to an end because of continued ill health. These documents show that throughout the correspondence the employer treated the matter as one relating to the petitioner's medical condition and his inability to regularly attend work. At no point was the matter treated as misconduct. No charge of unauthorized absence was framed against the petitioner. There was also no allegation that the petitioner had acted in wilful disobedience or that he had committed any act of indiscipline. If termination is imposed as punishment for misconduct, then it normally falls within the concept of retrenchment unless proper disciplinary procedure is followed. In the present case, however, the foundation of the employer's action appears to be the petitioner's inability to continue work because of his health condition.



14. The petitioner has strongly contended that no domestic inquiry was conducted and, therefore, the termination should be held illegal. This submission also requires careful consideration. An inquiry becomes necessary when the employer terminates the service of an employee by way of punishment or where the termination carries a stigma. In such cases, principles of natural justice require that the employee should be given an opportunity to defend himself. However, termination on the ground of continued ill health stands on a different footing altogether. Clause (c) of Section 2(oo) of the Industrial Disputes Act specifically recognizes that where a workman is unable to continue in service due to persistent medical incapacity, the employer may terminate the employment on that ground. In such a situation the action is not based on fault or misconduct but on the employee's inability to discharge duties. For that reason the Act does not insist on holding a disciplinary inquiry. What the Court has to see is whether the employer acted honestly and whether there was material showing that the employee was suffering from continued ill health. In the present case the record shows repeated medical leave taken by the petitioner. This position has not been seriously disputed even by the petitioner. These circumstances form the basis on which the employer formed an opinion about the petitioner's inability to continue service.

15. The petitioner has also submitted that the illness itself developed because of the working conditions in the Curing Department. According to him, the department involved work near hot plates, steam and chemicals and protective equipment like



masks was not provided. This submission certainly has some relevance from the point of view of industrial safety and the responsibility of the employer to maintain proper working conditions. However, even if it is assumed that the working atmosphere contributed to the petitioner's health problems, the legal question before this Court is limited. The Court has to see the nature of the termination within the meaning of Section 2(oo) of the Industrial Disputes Act. Clause (c) of the provision excludes termination on the ground of continued ill health from the definition of retrenchment. The clause does not draw any distinction between illness arising from personal reasons and illness which may have developed due to working conditions. Once the employer terminates the service on the ground of continued ill health, the case would fall within the statutory exclusion unless it is shown that the ground was falsely created or used merely as a cover to remove the employee. In the present case no such material is placed on record. On the contrary, the petitioner himself relies upon medical certificates and asserts that his health had in fact deteriorated.

16. The petitioner has further relied upon the application submitted by him under the Voluntary Retirement Scheme. The record shows that such an application was indeed submitted before the last date prescribed under the scheme. However, merely submitting an application under a voluntary retirement scheme does not automatically give a right to the employee to claim that he must be retired under that scheme. Acceptance of such application depends upon the terms of the scheme and the



approval of the employer. Unless the application is accepted, the employee cannot claim that he has retired voluntarily. Therefore, the fact that the petitioner had applied under the scheme does not by itself change the nature of the termination. It is true that in some later correspondence addressed by the respondent to the provident fund authorities there are references to resignation or voluntary retirement. These communications do appear somewhat inconsistent with the stand taken in the termination order. However, these letters were written after the termination and appear to be part of communication for settlement of provident fund or pension benefits. Such later correspondence cannot alter the character of the termination which had already been effected by the order dated 23 July 2002.

17. The Labour Court proceeded on the reasoning that since no inquiry was held and the termination was effected in the manner shown in the record, the action amounted to unfair labour practice. On that basis the complaint filed by the petitioner came to be allowed. The Industrial Court, while exercising revisional jurisdiction, examined the matter from the standpoint of the statutory definition of retrenchment. The Industrial Court came to the conclusion that termination on account of continued ill health is specifically excluded from the definition of retrenchment under Section 2(oo). Therefore, according to the Industrial Court, the complaint could not succeed on the footing adopted by the Labour Court. When the statutory provision is carefully read, the reasoning of the Industrial Court appears to be consistent with the legislative scheme. The definition of retrenchment is undoubtedly



wide. At the same time the legislature has clearly carved out certain situations where termination will not amount to retrenchment. Clause (c) is one such clear exception. Courts cannot ignore or dilute this exception by adding requirements which the statute itself does not provide.

**18.** The overall record of the case also deserves consideration. It shows that over the years the petitioner had taken substantial leave on medical grounds. The employer had issued show cause notices and had also cautioned the petitioner regarding his attendance. Ultimately the employer formed an opinion that the petitioner's health condition made it difficult for him to continue his duties. The termination order was passed on that basis. The termination was not imposed as punishment. It was not a case where the contract of employment expired. It was also not a case of retirement on reaching the age of superannuation. Nor was it a case where voluntary retirement had been accepted. The reason recorded in the termination order is continued ill health. This situation clearly falls within the exception contained in clause (c) of Section 2(oo). Once the case falls within that exception, the termination cannot be treated as retrenchment in law.

**19.** In view of these circumstances, the termination of the petitioner cannot be treated as retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947. The case is clearly covered by the exclusion provided in clause (c) relating to termination on account of continued ill health. The Industrial Court was therefore justified in setting aside the order passed by the Labour Court. The writ petition does not disclose any ground



warranting interference with the judgment of the Industrial Court.

**20.** The writ petition therefore stands dismissed.

**21.** No order as to costs.

**22.** All pending interlocutory applications stand disposed of accordingly.

**(AMIT BORKAR, J.)**