AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15779 OF 2025

Giri Textiles, through Proprietor
Chandrayya R. Pasnuri,
1180/A-4, Narayan Compound,
New Kaveri, Bhiwandi,
District Thane 421 302 ... **Petitioner**

Vs.

1. **Anthony Nadar**, C/o. Prashant Hotel,
   Pipe Line, Bhiwandi,
   District Thane 421 302.
2. **Jainam Silk Mills**, Gala No.1179 &
   1180, Narayan Compound,
   New Kaneri, Bhiwandi,
   District Thane 421 302 ... **Respondents**

Mr. Avinash Jalisatgi with Mr. Mulanshi Vora for the petitioner.

Mr. G.H. Keluskar for respondent No.1.

Mr. T.R. Yadav for respondent No.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 23, 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 has invoked the

supervisory and writ jurisdiction of this Court for assailing the order dated 22 December 2021 passed by the Labour Court, Thane in Application (BIR) No. 1 of 2014, as also the subsequent order dated 17 October 2025 rendered by the Industrial Court in Appeal (IC) No. 1 of 2022. The challenge is thus directed against concurrent orders passed by the Courts below whereby the objection raised by the petitioner came to be negatived.

2. The facts and circumstances leading to the institution of the present writ petition, as set out by the petitioner, may briefly be stated thus. Respondent No. 1 had instituted proceedings being Application (BIR) No. 1 of 2014 before the Labour Court at Thane. In the said proceedings, the petitioner raised a preliminary objection contending that the application itself was not maintainable inasmuch as it had not been preceded by issuance of an approach notice as contemplated under Section 42(4) of the Maharashtra Industrial Relations Act, 1947, formerly known as the Bombay Industrial Relations Act, 1946. The Labour Court, by its order and judgment dated 22 December 2021, rejected the said objection. Being aggrieved thereby, the petitioner preferred Appeal (IC) No. 1 of 2022 before the Industrial Court, Thane. The Industrial Court, however, by its order and judgment dated 17 October 2025, also dismissed the appeal and affirmed the view taken by the Labour Court. It is in these circumstances that the petitioner has approached this Court by way of the present writ petition.

3. Upon service of notice issued by the Labour Court, the petitioner entered appearance and filed its Written Statement

dated 25 February 2015 in reply to the claim proceedings. In the said Written Statement, a specific and categorical objection was raised, inter alia, that respondent No. 1 had failed to serve an approach notice prior to filing of the application under the Maharashtra Industrial Relations Act. According to the petitioner, compliance with such statutory requirement being mandatory in nature, the proceedings instituted in absence thereof were liable to be held as not maintainable.

4. Thereafter, the Labour Court heard the parties on the said objection and considered the rival submissions advanced before it. Upon such consideration, the Labour Court passed an order on 22 December 2021 whereby the application preferred by the petitioner raising the issue of maintainability came to be rejected, and the proceedings were directed to continue in accordance with law.

5. Before the Industrial Court, the petitioner relied upon various judgments of this Court in support of its contention that issuance of an approach notice under Section 42(4) of the said Act constituted a condition precedent for maintainability of the proceedings. It is the grievance of the petitioner that notwithstanding citation of the aforesaid binding precedents, the Industrial Court, by its order and judgment dated 17 October 2025 dismissed the appeal and failed to accord due consideration to the legal position emerging from the said decisions.

6. Mr. Jalisatgi, learned Advocate appearing for the petitioner, submits that the requirements prescribed under Section 42(4) read

with Rule 53 of the Maharashtra Industrial Relations Act are mandatory in character and admit of no casual departure. According to him, it is an admitted position on record that no such approach letter or statutory notice was issued by respondent No. 1 before institution of the application under the said enactment. He contends that the legal position on the point stands settled by binding precedents, namely that compliance with the said provisions is a condition precedent to maintainability of the proceedings. In such circumstances, the application, according to him, ought to have been rejected at the threshold itself. He further submits that both the Courts below failed to appreciate the true import of the statutory mandate and erroneously treated the objection raised by the petitioner as being merely hyper technical. Such reasoning, according to learned counsel, is legally unsustainable, and the impugned findings therefore deserve to be quashed and set aside.

7. Learned counsel further submits that the substantive application came to be instituted after a lapse of nearly six years from the date of the alleged termination of service, namely 5 July 2008. He points out that admittedly no approach notice was issued within three months from the said alleged termination, which according to him was the prescribed and relevant period under the statutory framework. He further contends that even after dismissal of Reference (IDA) No. 169 of 2009, no approach notice was served within the time contemplated by law. Without prejudice to the aforesaid contention, he submits that even in the principal application no explanation whatsoever was furnished for failure to

invoke the remedy within the stipulated period. It is urged that these material deficiencies were ignored by both the Courts below, which proceeded to reject the petitioner's objection and thereby committed manifest error in exercise of jurisdiction.

8. It is next submitted that the settled legal position, including the law noticed in the impugned orders themselves, is that an approach notice must be given within the prescribed period as contemplated under Section 42(4) read with Rule 53. According to learned counsel, respondent No. 1 never pleaded nor demonstrated that any such notice had been issued within the statutory period prior to filing of the main application. He submits that the communication upon which reliance has been placed by the Courts below is in truth a demand notice issued under the provisions of the Industrial Disputes Act, and that too addressed not to the present petitioner employer but to another entity. Such a notice, according to him, cannot in law be equated with, substituted for, or treated as an approach notice contemplated under the Maharashtra Industrial Relations Act. He therefore submits that the Courts below misconstrued both the settled legal position and the undisputed factual record, and thereby arrived at a conclusion which is wholly unsustainable.

9. Learned counsel further submits that the complaint addressed by the Union to the Labour Office on 5 July 2008 cannot by any standard be regarded as an approach notice under Section 42(4) of the said Act. He points out that the said complaint was directed only against respondent No. 2 and not against the petitioner, who is now asserted to be the employer. He further

submits that in Reference (IDA) No.169 of 2009, the Labour Court itself held that respondent No. 2 was not the employer of respondent No. 1. It is urged that the said communication neither professed to be an approach notice nor made any reference to the Maharashtra Industrial Relations Act. Learned counsel also emphasizes that the consequence of the said complaint was that the State Government referred an industrial dispute for adjudication under the Industrial Disputes Act, thereby indicating the nature and purpose of the communication itself. According to him, the letter was plainly intended to set in motion proceedings under the Industrial Disputes Act and not to comply with Section 42(4) of the Maharashtra Industrial Relations Act. He therefore submits that the Courts below, moved by sympathy rather than law, erroneously treated the said union letter as sufficient compliance, which finding is misconceived and contrary to record.

10. In support of the aforesaid submissions, Mr. Jalisatgi has placed reliance upon the decisions of this Court in *Rajaram Dipoo Khatik vs. Shriram Mills & Another*, 2002 (2) Mh.L.J. 74; *Jayavant Yaswant Raut vs. Simplex Mills Limited & Others*, 1995 II L.L.N. 898; *Changunabai Chanoo Palkar vs. Khatau Makanji Mills Limited*, 1992 Mh.L.J. 1641; *National Textile Corporation (South Maharashtra) Limited, Bombay vs. Mhmd Umer Mhmd. Hanif & Another*, 2001 (4) Mh.L.J. 724; and *Vithaldas Vallabhadas Vaishnav vs. Kohinoor Mills Co. Limited Nos. 1 and 2*, 1979 Mh.L.J. 420.

11. Per contra, Mr. Keluskar, learned Advocate appearing for respondent No. 1, submits that respondent No. 1 had initially

prosecuted Reference (IDA) No. 169 of 2009 against M/s. Jainam Silk Mills. He points out that in the Award dated 7 February 2012 passed by the Third Labour Court, Thane in the said reference, it was observed that M/s. Giri Textiles was the employer of respondent No. 1 and that too on contractual basis. In these circumstances, he submits that literal and strict compliance with Section 42(4) of the Maharashtra Industrial Relations Act became practically impossible for the employee. Learned counsel contends that strict observance of procedural requirements may reasonably be expected where the employer acts transparently and lawfully by issuing appointment orders, maintaining muster rolls, wage registers and other statutory records. However, in the present case, according to him, the employer itself failed to comply with basic legal obligations and maintained uncertainty regarding the true relationship of employment. In such a situation, he submits that it would be harsh, inequitable, and unreasonable to insist upon rigid compliance with Section 42(4) from an illiterate and economically weak workman.

12. Learned counsel further submits that even assuming, for the sake of argument, that by virtue of the Contract Labour Agreement dated 24 February 2004, M/s. Giri Textiles was the employer of respondent No. 1, still the employer was bound to engage its workmen by following due process of law, including issuance of appointment letters and maintenance of wage and attendance records. According to him, the material on record indicates that the appellant employer took every precaution to ensure that respondent No. 1 did not obtain documentary proof of

employment. In such circumstances, it is urged that the employer cannot be permitted to take shelter behind Section 42(4) of the Maharashtra Industrial Relations Act and Rule 53 framed thereunder so as to defeat adjudication of the real dispute on merits. He submits that procedural provisions cannot be allowed to become instruments for denial of substantive justice where the employer's own conduct has contributed to the difficulty complained of.

REASONS AND ANALYSIS:

13. I have considered the rival submissions with care. The matter goes to the reach of Section 42(4) of the Maharashtra Industrial Relations Act and Rule 53 of the Rules, and also to the practical justice due in industrial adjudication.

14. The decision in *Vasant Shivram Nare v. Maharashtra State Co-operative Land Development Bank Limited*, 1980 SCC OnLine Bom 259, lays down an important principle bearing directly upon the controversy regarding limitation under Rule 53(1) read with Section 42(4) of the Maharashtra Industrial Relations Act. The question before the Court was whether the prescribed period of limitation would commence from the date on which the order of dismissal was passed, or from the date on which such order was communicated to the employee. At paragraph 6, the Court found merit in the contention that limitation must run from the date of receipt of the dismissal order by the employee and not from the mere date written on the order itself. For this purpose, the Court relied upon the judgment of the Supreme Court in *State of Punjab*

v. Amar Singh Harika, AIR 1966 SC 1313. The Supreme Court had held that mere passing of an order of dismissal is not effective unless it is communicated or published. Until the affected person knows of the order, the authority may itself modify it, withdraw it, or reconsider it. Further, serious complications would arise if an undisclosed order were treated as immediately operative. Adopting that principle, this curt held in paragraph 8 that an order of dismissal becomes effective only when communicated to the employee concerned or otherwise published in a recognized manner. How and when communication is established would depend upon facts of each case. But unless communication or publication occurs, the order does not become operative in legal sense. Consequently, the expression in Rule 53(1), namely "within a period of three months from the date of such order", was interpreted to mean from the date of communication or publication of that order, and not the internal date borne on the order. The Court further referred to *Madanlal v. State of U.P.*, (1975) 2 SCC 779, where the Supreme Court reiterated that a party whose rights are affected by an order must have notice of it. In paragraph 9, the Court described this as a principle of fair play.

15. The legal position does indicate that Section 42(4) read with Rule 53 has statutory purpose and object. The legislature has required that before an employee invokes machinery of the Labour Court, an approach in prescribed manner should be made to the employer so that an opportunity of settlement may arise at initial stage itself. The judgments in *Rajaram Dipoo Khatik*, *Parshuram Ganpat Bhoir* and *Jaywant Y. Raut* show that such requirement

cannot be brushed aside by saying that procedure is unimportant. The Court is not permitted to ignore statutory language merely because hardship is pleaded.

16. At the same time, the same judgments when read with proper care also lay down another important principle. Compliance with law is necessary, but the meaning of compliance must be understood in context of facts. It cannot be applied in mechanical manner without examining surrounding circumstances. The Court must first identify what was the industrial dispute, what was known to the workman, what was concealed and whether the employer's own conduct created confusion. If there was no communicated order of termination, or if the employee was kept away from work without explanation, then procedural insistence and limitation cannot be imposed.

17. In the present matter, the principal objection of the petitioner is that no approach notice as contemplated by Section 42(4) was served prior to institution of the application, and therefore the application was not maintainable. I am unable to accept the same. The record shows that the respondent workman had earlier raised an industrial dispute being Reference (IDA) No. 169 of 2009. In the award dated 7 February 2012 passed therein, the Labour Court itself recorded that M/s. Giri Textiles was the employer of respondent No. 1, that too on contractual basis. Once the identity of the employer and nature of employment stood under dispute, it would be unrealistic to presume that the workman was in possession of all correct facts, so as to issue a perfect notice to the correct employer within exact time. A

workman cannot be expected to know internal arrangements between principal employer and contractor. If the relationship itself was clouded, the law cannot insist upon precision from the weaker party.

18. The petitioner further contends that the communication relied upon by the respondent cannot be treated as an approach notice, because according to the petitioner it was a demand notice under the Industrial Disputes Act and was addressed to another party. There is some force in the submission to this extent that a notice issued under one statute cannot be treated as notice under another enactment without examining purpose. Separate statutes have separate fields. Labels and legal character do matter. The Court must see the substance of the communication.

19. If the employer itself had not issued appointment order, had not maintained muster entries, had not produced wage records, and if the workman was left to struggle to identify who in law was his employer, then insistence on a notice loses its force. The law in *Jayavant Y. Raut* indicates that where no termination order is communicated, and the employee is refused work, the grievance may travel beyond challenge to an order and may fall in category of employment dispute under Schedule III. If that be so, then a communication seeking restoration of work or raising grievance of denial of employment cannot be rejected only because it does not carry the caption of “approach notice”.

20. It is further submitted on behalf of the petitioner that the letter dated 5 July 2008 itself contains reference to the alleged

termination of service and, therefore, the same demonstrates that the workman had knowledge of termination on that date. In the present matter, the letter dated 5 July 2008 appears to be a complaint raised through union before the Labour Office. Such communication prima facie reflects industrial grievance. It may show that the workman felt that his services were discontinued. But by itself, it does not establish that the employer had communicated a termination order on that date. No material has been shown of service of dismissal letter, acknowledgment by the workman. In absence of such evidence, the said letter alone cannot be proof of complete knowledge. Even otherwise, if the employment relationship itself was disputed and the identity of employer became subject-matter of prior proceedings, then mention of termination in the union letter may indicate the complaint of unemployment, not about who terminated the service and under what authority. Where the employer is uncertain, the employee's statement in a complaint letter must be read with caution. Therefore, though the letter dated 5 July 2008 is a relevant circumstance and may indicate that the workman was aware that he was being kept out of employment, it is insufficient by itself to hold that limitation commenced from that date.

21. The submission on limitation does not assist the petitioner. In *Rajaram Dipoo Khatik*, it has been held that the period of limitation of three months under Section 42(4) is to be reckoned from the date on which the employee is informed of termination of service. Mere internal passing of an order, without communication to the concerned employee, is not sufficient. Here, the petitioner

has not been able to place material to show that respondent No. 1 was ever informed that his services stood terminated from a specified date. No acknowledgment has been shown so as to remove doubt. Mere assertion in written statement that services were terminated, and such termination was communicated cannot establish the fact. The burden to establish communication rested upon the employer because it is the employer who invokes limitation as defence. That burden has not been discharged.

22. Therefore, the Courts below were not in error in treating the objection as hypertechnical in the facts of this case. The employer has not shown that a order of termination was served on employee in a conclusive manner.

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

(i) The writ petition stands dismissed;

(ii) The order dated 22 December 2021 passed by the Labour Court, Thane in Application (BIR) No. 1 of 2014 and the order dated 17 October 2025 passed by the Industrial Court, Thane in Appeal (IC) No. 1 of 2022 are upheld;

(iii) It is held that, in the facts of the present case, the objection raised by the petitioner as to non-maintainability of the application on the ground of alleged non-compliance with Section 42(4) of the Maharashtra Industrial Relations Act, 1946 read with Rule 53 of the Rules, does not merit acceptance;

(iv) It is further held that no case is made out for interference in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India;

(v) Application (BIR) No. 1 of 2014 shall proceed before the Labour Court, Thane in accordance with law and be decided on its own merits, uninfluenced by any observations made in the impugned orders or in the present judgment, save and except on the issue concluded herein;

(vi) The Labour Court shall endeavour to dispose of the said application as expeditiously as possible and preferably within a period of six months from the date of receipt of this order;

(vii) Rule is discharged;

(viii) There shall be no order as to costs.

(ix) Pending interim applications, if any, stand disposed of.

(AMIT BORKAR, J.)