

Neeta Sawant

WP 1964 of 2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1964 OF 2025

Dilip M. Bobade

*...Petitioner***V/s.**

M/s. Lloyd's Register

...Respondent

Mr. C.K. Kotwal *i/b. Mr. Shushant Maggu, for the Petitioner.***Ms. Seema Chopda** *i/b. Prasad Dube Patil & Co., for the Respondent.*

CORAM: SANDEEP V. MARNE, J.**JUDGMENT RESD. ON: 30 JULY 2026****JUDGMENT PRON. ON: 5 AUGUST 2026****JUDGMENT:**

1) By this Petition, Petitioner has challenged the Award dated 18 September 2023 passed by the Labour Court, Mumbai answering Reference (IDA) No. 51 of 2015 in the negative. The Reference was made for adjudication of dispute relating to demand of the Petitioner for reinstatement in service with continuity and backwages.

2) Respondent is a provider of classification and compliance services to the marine and offshore industries by helping them to design, construct, operate, extend and decommission their assets safely and in line with environmental expectations. The Respondent-Company has its operations in various countries and also has offices in India. Petitioner was appointed as 'Secretarial Assistant' in the Respondent-Company on 1 July 1997. By letter dated 21 July 2006, Petitioner was promoted on the post of 'IT Support Analyst' by the Respondent-Company. On 24 April 2009, he was further promoted to the post of 'IT Delivery Analyst'. While so working, Petitioner received letter dated 17 February 2012 communicating to him that he would not be entitled to salary increment due to gap in his performance. Petitioner protested against the decision and pressed his demand for salary increment. It is Petitioner's case that the HR Manager however shunned his request for salary increment and forced him to tender his resignation under a threat of implication in false cases for termination. Petitioner sought annual leave from 12 March 2012 to 22 March 2012 on account of hypertension and shooting up of his blood pressure. He could not report to work on 23 and 24 March 2012 owing to his weekly off. Upon reporting for duties on 25 March 2012, Petitioner was served with Suspension cum Show-Cause Notice dated 26 March 2012, alleging that Respondent had observed problems pertaining to IT networks and services in India and other countries including Japan, China, Hong Kong, Singapore, Malaysia and the United Kingdom. It was further alleged that Petitioner remotely logged in to the LR IT system through the company-provided laptop and initiated actions damaging the IT services at the above-mentioned locations, requiring

the Company to undertake repair works for over 4-5 days. The Petitioner responded to the Show-Cause Notice on the same day. He was served with termination letter dated 27 March 2012, leveling allegations against him of he remotely logging into LR IT system through company laptop on 16 March 2012 and by using 'protected access rights', removed critical system files and shut down the servers. Petitioner protested against the termination vide letter dated 5 October 2012 and sought pending dues such as gratuity, superannuation pension, provident fund, annual leaves etc. The request of the Petitioner was turned down by letter dated 25 October 2012. Thereafter, Petitioner served demand notice dated 15 February 2013 seeking reinstatement with full backwages. Respondent did not accept the request. At the instance of the Petitioner, the appropriate Government made a Reference to Labour Court, Mumbai, which was registered as Reference (IDA) No. 51 of 2015. Petitioner filed his Statement of Claim which was resisted by the Respondent by filing Written Statement. The Labour Court framed issues. The first issue was framed about status of the Petitioner as workman under Section 2(s) of the Industrial Disputes Act, 1947 (**ID Act**). The second issue was with regard to validity of termination order and the third issue was with regard to the relief of reinstatement with backwages and continuity of service.

3) Petitioner examined himself as a witness. Respondent examined Mr. Ashish Gharat and Mr. Neerav Deherkar as its witnesses. After considering the pleadings, documentary and oral evidence, the Labour Court has answered the preliminary issue relating to status of the

Petitioner as workman in the negative. In that view of the matter, the Labour Court has not conducted enquiry into the second and third issues. The Reference is accordingly answered in the negative by judgment and Award dated 18 September 2023.

4) Mr. Kotwal, the learned counsel appearing for the Petitioner, submits that the Labour Court has grossly erred in answering the issue relating to status of the petitioner in the negative. That the Labour Court has ignored the position that Petitioner was the only person in India reporting directly to the Team Leader in China. That mere troubleshooting task performed by him does not mean that he had any managerial responsibility. That none of his decisions were binding on the Company. That whatever purchases made by the Petitioner were with the prior approval of the team leader. He takes me through the evidence of HR Head in support of his contention that the Petitioner was not taking any decision about suitability of software. That the cross-examination of Respondent's witnesses clearly bears out performance of technical duties by the Petitioner. That the Labour Court has erroneously relied on evidence of Mr. Ashish Gharat who was appointed in the place of the Petitioner. That the said witness also admitted that the duties performed by the Petitioner were 'somewhat similar', meaning thereby that the duties and responsibilities were not identical. He submits that training received by the Petitioner was meant for undertaking troubleshooting activities.

5) Mr. Kotwal further submits that Petitioner did not have any authority to grant leave, dismiss employees, appoint them or take any independent decision on behalf of the Company. That he was responsible only for the task of resolving IT problems of employees of the Respondent-Company. The Labour Court has misinterpreted the key responsibilities as mentioned in the role profile of the Petitioner. That even PPP report is misinterpreted by the Labour Court, ignoring the position that Petitioner was merely giving tips or advice to the users to reduce the call volumes. That the Labour Court has erred in holding that Petitioner was performing supervisory work. That mere quality check or examining the works of others does not mean that employment of the Petitioner was in supervisory capacity. He accordingly prays for setting aside the order passed by the Labour Court.

6) The Petition is opposed by Ms. Chopda, the learned counsel appearing for the Respondent-employer. She submits that the status of the Petitioner is rightly held to be not of a workman by the Labour Court. That he was functioning as an IT Analyst and was the only IT Analyst posted in India. That he was the only person in India to have access to the servers of the Company. That he was repeatedly sent for training outside India. That the workman cannot be deployed outside India for training. That he had full authority to purchase software. That his decision to take software with regard to the software were binding on the Company. That he gave express admission during the course of his cross-examination that he was not doing technical work. That his appointment order described his role as an Administrator. That he drew

salary of Rs.53,000/- plus perks. That he admitted having given training to other employees. That the Labour Court has rightly appreciated the evidence on record for holding that Petitioner is not a workman within the meaning of Section 2(s) of the ID Act. That in absence of element of perversity, there is no warrant for interference in the finding of fact recorded by the Labour Court. She prays for dismissal of the Petition.

7) Rival contentions urged on behalf of the parties now fall for my consideration.

8) The short issue that arises for consideration in the present Petition is whether Petitioner can be treated to be a 'workman' within the meaning of Section 2(s) of the ID Act for maintaining the Reference made for adjudication of his demand for setting aside the termination order and for reinstatement with backwages. According to the Petitioner, he initially joined the services of the Respondent-Company on 1 July 1997 as Secretarial Assistant. He was promoted to the position as IT Support Analyst on 21 July 2006 wherein his role was described as that of an administrator. He was further promoted to the position as IT Delivery Analyst by letter dated 24 April 2009. The promotion letter dated 24 April 2009 would indicate that the position of IT Delivery Assistant was in the grade of 'Business Support Specialist' and based in 'Level 3b'. The role profile of the Petitioner as placed before the Labour Court, which described the purpose of the role as '*Solve 2nd Line Desktop Problems in accordance with the Operating Level Agreements, provide an IT point of*

contact for local staff and assist during rollouts where required by Group IT Services'. The key responsibilities of the Petitioner were as under:

- A. Identify, suggest and assist managers with implementing change and developments to the administration processes and procedures to meet future business demands and improve current efficiency.
- B. Responsible for ensuring that the administration structure, processes and procedures are effective and efficient and meet the current business requirements for both internal and external clients
- C. Ensures documentation/data/information and tasks are planned, evaluated and processed in accordance with local business requirements and agreed deadlines.
- D. Review & analyse data to provide management information/statistics, including the identification and reporting of process failures, to support the overall delivery of processes.
- E. To discuss/present basic reports in a specific technical area with a technical audience/client and be able to suggest alternative solutions to satisfy technical standards.
- F. To provide technical specialist support/advice for a specific technical area to internal/external customers.
- G. To coach other employees as appropriate to achieve effective knowledge transfer and application.
- H. Ensure that activities within their area of control are carried out in line with internal procedures and contractual requirements.
- I. Provides safety leadership to the immediate team through active involvement on health and safety issues.

9) His appointment order as IT Support Analyst dated 21 July 2006 made it clear that the same was in the cadre of an administrator. He was placed directly under the Line Manager, Mr. Jason Womg, Asia Area IT team leader, Mr. Umesh Nagda, Finance & Administration

Manager for India and Sri Lanka and under overall jurisdiction of Mr. P.K. Banerjee, Area Manager for India and Sri Lanka.

10) Petitioner's case is that he was predominantly performing technical work. Though Petitioner was assigned the designation of IT Delivery Analyst, it is well-settled position that mere designation of a person is not determinative of his/her status and the nature of work performed by him needs to be taken into consideration for deciding his/her status. In that view of the matter, the exact nature of duties and responsibilities performed by the Petitioner can alone decide his status. Though Petitioner contends before me that he was predominantly performing technical nature of work, he admitted during the course of his cross-examination that he was not doing any technical nature of work while solving problems, IT queries etc. The relevant part of his cross-examination reads thus:

30) I do not know whether there was any Operational Level Agreement in terms of which I have to resolve I. T. Queries of the employee. It is true to say that, for Desktop support services, the concerned employee used to login and raised the grievance in the system. It is not true to say that, desktop support referred to P.C., printer, mouse, key board, network etc. (W.V. state that desktop support refers to only PC). It is true to say that, whenever I received the complaint in login system, I used to talk directly to the concerned employee for understanding the problems. It is true to say that, for understanding the problem I used to analyze what is the cause of the problem and then used to provide solution to the problem. Now, the witness says that he was not analyzing the cause of problem and used to refer the same to the third party i.e. Local Vendor. It is not true to say that, whether there was hardware or software issue of the concerned PC, I was not analyzing the same. I used to refer the same to the third party directly. There was turned around time of each type of grievance, it could be one hour or one day upto 5 days. It is true to say that for one hour turned around time also I used to send PC to third party. It is true to say that, I never open any PC or other ancillaries to rectify the problem. It is true to say that, if the problem is not resolved upto 5 days, then I used to escalate and forward the same to the head quarter at China. **It is true to say**

that, I was not doing any technical nature of work during the said process. I cannot say about the work of operational nature, which I was doing.

(emphasis added)

11) Thus, there is emphatic admission by the Petitioner that while performing the task of solving of queries, he was not doing any technical nature of work.

12) It has come in the evidence that Respondent imparted training to more than 125 users and that he guided other officers or persons providing IT support. The Labour Court has accordingly held that a person imparting training and giving guidance to others cannot fit into definition of the term 'workman'. Imparting training and giving of guidance to other employees is facet of supervisory nature of work. It has also come in evidence that Petitioner had authority to guide the company in respect of software matters. He made purchases of software and decisions taken by him regarding the software was accepted by the management. He was the only person who had access to the server of the company. It has come in evidence that Petitioner traveled to Hong Kong and Shanghai in connection with work of the company on couple of occasions. Considering this position, coupled with the admission of non-performance of technical nature of work, it is difficult to hold that Petitioner answered the description of a workman under Section 2(s) of the ID Act.

13) Petitioner has harped upon admission given by the HR Manager, Mr. Nirav Deherkar in his cross-examination stating that

Petitioner was not taking decision about suitability of software. However, in his cross-examination, Petitioner admitted that he was the only person who used to interact with the computer vendors and that they never used to interact directly with the Headquarter Office at China. He further admitted that in India, as well as in the southwestern region, except him, there was no other IT Delivery Analyst and that he used to directly report to the Delivery Leader at China.

14) Mr. Kotwal has highlighted the aspect of absence of authority to sanction leaves or initiate disciplinary action against any other employee. In this regard, reliance by the Labour Court on judgment of this Court in *Inthru Noronha vs. Colgate Palmolive (India) Ltd. and others*¹ appears to be apposite. This Court has taken note of rapid evolution in the manner in which business is conducted and the changes technology has brought in with passage of time. This Court has held that swifter evolution of technology has led to quantum change in business environment. It has held that every employee in the managerial cadre may not necessarily have the power to appoint or dismiss the personnel or to grant leave applications. It is therefore held that the test of existence of control over subordinates may also be exercised by persons who are not in managerial cadre. This Court held as under:

26. In deciding a case such as the present, the Court must be careful not to place its construction of legal categories into a straitjacket. Business in recent years has been marked by rapid organizational changes. The swift evolution of technology has led to a quantum change in the business environment. Modern managements have to alter the structure of organization in order to meet the exigencies of the time. Every employee in the managerial cadre may not necessarily have the power to appoint or dismiss personnel nor indeed would

1 2005 SCC OnLine Bom 47

an employee engaged mainly in a managerial or administrative capacity always have the power to sanction leave applications. Similarly, the test of the existence of control over subordinates may be applicable in certain factual situations, but not necessarily in every conceivable case. In others, control over subordinates may not necessarily be by all personnel in the managerial cadre. The number and strength of the subordinate staff depends upon the nature of the business that is being conducted. It would, for instance, be wholly inappropriate to apply the same test which would govern the organization of a traditional form of manufacturing business to a business founded on software, biogenetics or a business at the cutting edge of technology. The interpretation of section 2(s) must be such as would not lead to stultifying innovation, development and change in managerial practice. Business managers should have a high degree of latitude to promote efficiency in a competitive business environment. Courts are of course vigilant to deal with subterfuge. The important thing for the Court is to evaluate the position of an employee with reference to the nature of his duties in the context of the business where those duties are performed....

15) In *Standard Chartered Bank Versus. Vandana Joshi*², this Court has taken note of ratio of judgment in *Inthru Noronha* (supra) and has considered varied roles played by employees in banking industry with rapid change in the business models. The Court held in para 18 thus:

18. The fact that in an organizational structure the employee, in the course of the decision making process, is subject to checks and balances is not a matter which would establish that she / he is a workman within the meaning of Section 2(s). Modern forms of business in corporate organizations put into place a carefully crafted process of checks and balances. Rarely, if ever, would an employee have authoritarian control over business decisions. Employees are made subject to checks and balances both at the lateral and vertical level. Managerial decisions are subject to verification and approval. The fact that decisions of an employee are subject to verification or subject to a system of controls and balances does not establish that the employee is a workman within the meaning of Section 2(s). Managers do not become workmen because their decisions are structured by processes and approvals. Absolute autonomy is not the norm in managerial decision making. Nor does the law insist on absolute discretion or absolute autonomy for a person to be a manager. Basically the answer to the question must depend upon the dominant nature of the duties and responsibilities.

² (2010) 1 CLR 163

16) In my view therefore, mere absence of power to grant leaves or dismiss employees cannot be a factor enough for deciding the status of the Petitioner. He was working under a unique environment where he was the lone personnel to look after the work of the company in the entire South West Asia. In that sense, presence of power to sanction leaves or dismiss employees cannot alone be the factor for presuming absence of managerial powers. As held by this Court in ***Inthru Noronha*** and ***Standard Chartered Bank***, there can be managers without power of sanctioning leaves or dismissing employees in modern corporate environment.

17) In the present case, Petitioner has failed to prove that he was essentially performing only technical work without having any authority to take decisions on behalf of the Company. On the other hand, in relation to operations of the Company in India and even abroad, it appears that he had full control and authority to take decisions which would bind the Company. Far from proving that he was performing only technical nature of work, Petitioner gave emphatic admission that the work performed by him was not of technical nature. Apart from admissions given by the Petitioner in cross-examination, Respondent led evidence of two witnesses to establish that the nature of work performed by the Petitioner was managerial and administrative. It has come out that Petitioner was more like a software engineer looking after the technical needs of the Respondent. In view of the fact that he was the only IT Analyst for the entire Southwest Asia, it is difficult to hold that he was a 'workman' within the meaning of Section 2(s) of the ID Act.

18) This Court had occasion to examine the status of IT Analyst in **Rohit Dembiwal Versus. Tata Consultancy Services Ltd. And Ors.**³ The Petitioner therein was working as IT Analyst and had filed complaint of unfair labour practice before the Labour Court, Mumbai, challenging his termination. Ms. Chopda has submitted that in **Rohit Dembiwal**, this Court has ruled that an IT Analyst cannot be treated as a workman. In my view, however, a straitjacket formula cannot be applied merely on the basis of designation of a person and what needs to be examined is the nature of work performed by him/her. In the facts of that case, this Court after analysing the evidence on record has held that the Petitioner therein was not a workman. In the present case, this Court has not upheld the findings of the Labour Court about status of the Petitioner only by reason of designation of the Petitioner. The Labour Court has analysed the nature of work performed by him. I am in agreement with the findings recorded by the Labour Court that the nature of work performed by him and the authority exercised by him while working with the Respondent-Company did not prove status of the Petitioner as a workman.

19) Considering the above position, I do not find any reason to interfere in the findings recorded by the Labour Court. The Writ Petition is devoid of merits. It is accordingly **dismissed** with no order as to costs.

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[SANDEEP V. MARNE, J.]

3 Writ Petition No. 10523 of 2023 decided on 2 January 2024