



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8740 OF 2026

Vitthal Dilip Mhaske

...Petitioner

V/s.

1. Chief Executive Officer, Nord Drive
Systems Pvt. Ltd.

2. Assistant Manager, H.R. and
Administration Nord Drive
Systems Pvt. Ltd.

...Respondents

WITH
WRIT PETITION (STAMP) NO.21261 OF 2026

Chief Executive Officer

...Petitioner

V/s.

Vitthal Dilip Mhaske

...Respondent

Mr. Nitin Kulkarni *for Petitioner in WP/8740/2026 and for Respondent in WPST/21261/2026.*

Mr. Abhishek R. Avachat *with Mr. Sushant Jadhav for the Petitioner in WPST/21261/2026 and for Respondent in WP/8740/2026.*

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 5 AUGUST 2026

Judgment pronounced on: 11 AUGUST 2026.

JUDGMENT:

1) These are cross Petitions filed by the employer and the employee challenging the judgment and order dated 5 February 2026 passed by the

learned Member, Industrial Court, Pune in Revision Application (ULP) No.33 of 2024. The Revision preferred by the employer has been partly allowed by the Industrial Court confirming the judgment dated 2 May 2024 passed by the Labour Court in Complaint (ULP) No.82 of 2015 to the extent of reinstatement and continuity of service w.e.f. 20 May 2014. However, direction for payment of full backwages from 20 May 2014 is rejected by the Industrial Court.

2) The employee has accordingly filed Writ Petition No.8740 of 2026 to the limited extent of denial of full backwages from 20 May 2014. On the other hand, the employer has filed Writ Petition (Stamp) No.21261 of 2026 challenging orders passed by the Labour Court and Industrial Court directing reinstatement of the employee.

3) It must be observed at the outset that the employee has already been reinstated in service in pursuance of the order of the Industrial Court and accordingly Writ Petition (Stamp) No.21261 of 2026 has been rendered infructuous. Now what survives is only the challenge raised by the employee to the order of the Industrial Court denying backwages from 20 May 2014 onwards.

4) Briefly stated, facts of the case are that M/s. Nord Drivesystems Pvt. Ltd. (**employer**) is engaged in the business of manufacturing of industrial gear boxes, geared motors and allied engineering products. The employee joined the services of employer on 20 August 2007 in the Painting Department. He was subsequently assigned the work relating to stores in the Logistics Department. While so working, the employee was embroiled in criminal prosecution when a complaint was filed for

offences punishable under Sections 366-A, 376(2)(i), 420, 506(2) r/w Sections 108, 507 r/w Section 34 of the Indian Penal Code, 1860 and Section 3 r/w Section 4 of the Protection of Children from Sexual Offences Act, 2012 (**POCSO**) under Section 4(25) of the Arms Act, 1959, Section 37(1) r/w Section 135 of the Bombay Police Act, 1951 and Section 2(1)(B) r/w Sections 3(2) and 3(3) of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013. The employee was Accused No. 2 in the criminal prosecution and the main allegations were against Accused No. 1. The employee was made an accused apparently because his car was used in the offences alleged against Accused No. 1. The employee submitted leave applications during 29 March 2014 to 19 April 2014 when he was attempting to secure anticipatory bail. After the anticipatory bail application was rejected, he came to be arrested and sent to Magisterial custody on 21 May 2014 and remained in custody upto 21 June 2014. The employee therefore remained absent without any intimation from 20 May 2014 to 21 June 2014. Services of the employee were terminated by the employer vide letter dated 23 July 2014 w.e.f. 20 May 2014 alleging absence from duty.

5) The employee filed Misc. Application (ULP) No.43 of 2014 for condonation of delay in filing the Complaint. By order dated 17 July 2015, the delay was condoned. The Complaint (ULP) No.82 of 2015 was resisted by the employer by filing written statement. The employee examined himself. After considering the pleadings, documentary and oral evidence, the Labour Court framed issues regarding practicability to hold departmental enquiry and ability to prove misconduct allegedly

committed by the employee in addition to issue relating to commission of unfair labour practices.

6) By judgment and order dated 2 May 2024, the Labour Court allowed the Complaint and set aside termination order dated 23 July 2014 and directed reinstatement of the employee w.e.f. 20 May 2014 with full backwages and continuity of service. Aggrieved by the decision of the Labour Court, the employer filed Revision Application (ULP) No.33 of 2024 before the Industrial Court, Pune. By judgment and order dated 5 February 2026, the Industrial Court has set aside direction for payment of backwages and has directed only reinstatement of the employee in service w.e.f. 20 May 2014 without any backwages. Aggrieved by denial of backwages, the employee has filed Writ Petition No.8740 of 2026.

7) Mr. Kulkarni, the learned counsel appearing for the Petitioner-employee submits that the Industrial Court has erred in denying backwages to the employee. That the order for backwages granted by the Labour Court is erroneously set aside on singular ground of failure to plead absence of gainful employment in the Complaint. That the Petitioner-employee was terminated vide letter dated 23 July 2014. He filed representation for reinstatement on 29 July 2014 and on rejection of request on 9 September 2014, he immediately filed Complaint on 29 September 2014. That therefore there was no sufficient time gap during which the employee could have scouted for alternate job. This is the only reason why no averment was pleaded in the Complaint about absence of gainful employment. That evidence of absence of gainful employment was led by the employee at the earliest possible occasion by filing affidavit of evidence on 24 November 2017. That the employer did not

prove any gainful employment of the employee during the relevant period. That it is not necessary that there has to be pleading of absence of gainful employment and evidence in absence of pleadings can always be taken into consideration. In support, he relies on judgments of the Apex Court in *Bhagwati Prasad V/s. Chandramaul*¹ and of this Court in *Taranjitsingh I. Bagga V/s. Maharashtra State Road Transport*² and *M/s. Bal Vidhya Prakashan V/s. Prakash Baliram Hiwse and Ors.*³. Mr. Kulkarni further submits that the employee is unceremoniously terminated retrospectively. That the retrospective termination is impermissible. That the termination was effected only on account of absence for about a month. That since the termination is found to be illegal, payment of backwages must be a natural consequence. He accordingly prays for setting aside the order of the Industrial Court.

8) Mr. Avachat, the learned counsel appearing for the Respondent-employer opposes the Petition filed by the employee. He submits that the Industrial Court has rightly reversed the direction for payment of backwages. That the employee was involved in serious crime and remained absent from duties leaving no option for the employer to terminate his services. That there cannot be any evidence in absence of pleadings. That the Industrial Court has rightly denied backwages to the employee. That the employee has already been reinstated in service and the employer cannot be made to bear the burden of paying backwages to the employee, who was himself responsible for his termination. That the employee suppressed the information of involvement in a crime, arrest and custody. That he gave false and misleading pretext for seeking leave.

1 1965 SCC OnLine SC 111

2 2008 (110) BOM L.R. 1245

3 Writ Petition No.4207 of 2008, decided on 22 August 2017.

That considering the conduct of the employee and his involvement in serious crime, he cannot be rewarded with backwages. He prays for dismissal of the Petition filed by the employee.

9) I have considered the submissions canvassed by the learned counsel appearing for the rival parties. I have gone through the findings recorded by the Labour and Industrial Courts in their respective orders. I have also perused the records of the case filed alongwith the Petitions.

10) As observed above, the employee has already been reinstated in service by letter dated 11 May 2026. He has joined service on 18 May 2026. In that sense, challenge to the orders of the Labour and Industrial Courts no longer survives and in that view of the matter Writ Petition (Stamp) No.21261 of 2026 has been rendered infructuous.

11) In so far as challenge raised by the employee to the order of the Industrial Court is concerned, the challenge is restricted only to denial of backwages. The Labour Court has awarded full backwages w.e.f. 20 May 2014. The Industrial Court has however, recorded following findings for denial of backwages:

14. In so far as grant of full back wages is concerned, the learned Labour Court held that since the termination is illegal and non-est the opponent is entitled to full back wages. However, while granting full back wages, the learned Labour Court has forgotten the basic principle of pleading. **As can be seen from the complaint at Ex.U-1 filed before the learned Labour Court that the opponent has not uttered a single word about non-gainful employment.** It is material to note that the alleged termination took place vide letter dt.23/07/2014 by which it was informed that name of opponent was removed from the muster roll w.e.f.20/05/2014 and the complaint before the learned Labour Court was filed with an application for delay condonation bearing Misc. Application (Delay) (ULP)

No.43/2014 on 29/09/2014. **Therefore it was duty of the complainant to plead in the complaint itself that he was not gainfully employed.** The opponent had deposed in his evidence affidavit that after termination he tried to secure a job but could not get any job and therefore he remained unemployed. **However, this evidence is not preceded by the pleading.** The complaint filed by the opponent is totally silent on this aspect. **Therefore, in the absence of any pleading the evidence led by the opponent need not be considered and therefore it ought to have been held by the learned Labour Court that the opponent was not entitled to back wages.**

(emphasis added)

12) Admittedly, the employee did not raise any pleadings in the Complaint about absence of gainful employment. This is sought to be explained by Mr. Kulkarni by contending that the time gap between termination and filing of Complaint was extremely short and that therefore pleading relating to absence of gainful employment was not raised. I am not inclined to accept the said justification. The termination order was issued on 23 July 2014 and the Complaint was filed alongwith application for condonation of delay by the employee on 29 September 2014. There was thus, time gap of more than two months between termination and filing of Complaint. Also the termination is actually retrospective. He was absent since March 2018. He was thus without any wages for substantial time and the natural conduct, after receipt of termination would have been to make some effort for searching a source of livelihood. Nothing prevented the employee from raising a pleading that he was employed anywhere after his termination. The employee could have amended the pleading by incorporating an averment of absence of gainful employment. In absence of any pleading, he directly gave following evidence in relation to gainful employment:-

मला कमी केल्यानंतर मी नोकरीसाठी अनेक प्रयत्न केले. जाब देणार यांनी मला कमी केल्याचे सांगितल्यानंतर मला कोणीही नोकरीवर घेत नाही. माझ्या वडिलोपार्जित शेतीमध्ये मी, माझे वडील, आई, माझी पत्नी काम करून कुटुंब चालवत असतो.

13) It is well settled position that evidence cannot be adduced in absence of pleadings. In this regard reference can be made to judgment of the Apex Court in *Shrinivas Raghavendrarao Desai (Dead) by Lrs vs Kumar Vamanrao @ Alok on 4 March, 2024*⁴ in which it is held in paragraph 15 as under:

15. There is no quarrel with the proposition of law that no evidence could be led beyond pleadings. It is not a case in which there was any error in the pleadings and the parties knowing their case fully well had led evidence to enable the Court to deal with that evidence. In the case in hand, specific amendment in the pleadings was sought by the plaintiffs with reference to 1965 partition but the same was rejected. In such a situation, the evidence with reference to 1965 partition cannot be considered.

14) Even though strict rules of pleadings may not apply to labour litigation, when the basic pleading is absent, it is difficult to consider the evidence on record. In case before this Court in *K.L. Kumar V/s. V.P. Patil and Others*⁵ this Court has held in paragraph 8 as under:-

8. In my view, the Labour Court cannot be faulted for having dismissed the Reference. There is not even a whisper in the statement of claim that the petitioner had worked in Dowell prior to his employment with Respondent No. 2 and that his services with Dowell should be treated as continuous with his employment in Respondent No. 2 in order to compute whether the petitioner had completed 240 days in service. There is no pleading at all in the statement of claim that the petitioner had applied for employment with Dowell and that the name of the prospective employer in his application had been changed to Respondent No. 2. The submissions of the learned advocate for the petitioner who has relied on the judgments in Ram Sarup Gupta and Ors. v. Bishun Narain Inter College and Ors. ; Bhagwati Prasad v. Shri Chandramaul ; Oriental Insurance Co. Ltd. v. Sunderbai and Anr. 1998 (1) L.L.J. 37 MP; Himanshu Sekhar Sharma v. Presiding Officer, Labour Court and Ors. 1994 (1) L.L.J. 1124 Ori. to submit that pleadings should be liberally construed, though correct, cannot be accepted in the present case. There is no doubt that

⁴ Civil Appeal No.7293-7294 of 2010 decided on 4 March 2024.

⁵ 2008(2) Mh.L.J.598

technical pleas should not be a hurdle in granting relief under welfare legislation. However, in the present case, when the foundation of the petitioner's contention is based on whether he had completed 240 days in service there must be some pleading to the effect that he had worked with the sister concern of Respondent No. 2 and that his name was included on the muster roll of Respondent No. 2 only by way of subterfuge. **When this basic pleading is absent, it is extremely difficult to consider the evidence on record although strict rules of pleadings may not apply to labour litigation.** In the present case, the petitioner has not sought a reference against Dowell at all nor has the petitioner asked for a corrigendum to be issued to make Dowell a party to the Reference. In such circumstances, it is difficult to uphold the contention of the learned advocate for the petitioner. **It is well settled that no amount of evidence can take the place of the pleadings.** The evidence must be founded on the pleadings so that the contesting party is not taken unawares by the evidence.

(emphasis added)

15) To get over the difficulty of directly leading of evidence in absence of pleadings, Mr. Kulkarni has relied upon judgment of the Apex Court in ***Bhagwati Prasad*** (supra) in which it is held in paragraph 10 as under:-

10. But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. **If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence.** The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it ? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of

prejudice, and in doing justice to one party, the Court cannot do injustice to another.

(Emphasis added)

16) In the present case, it cannot be contended that the plea of absence of gainful employment was covered by implication or that parties knew that the said plea was involved in the trial. Therefore, the evidence led about absence of gainful employment without supporting pleadings cannot really be taken into consideration. Mr. Kulkarni has relied upon judgment of this Court in **Taranjitsingh I. Bagga** (supra) in which it is held in paragraph 8 as under:-

8. Learned Advocate Shri Mehadia for the respondent submitted that the law has undergone change and unless the employee pleads and proves that he was not gainfully employed, he would not be entitled to back wages automatically upon reinstatement. As the Apex Court has observed time and again, the question of entitlement to back wages would depend on the facts and circumstances of each case, and there can be no straitjacket formula. The Court cannot be oblivious to the fact that an employee, whose services were terminated wrongly, has not only to fight for his survival by getting such odd jobs as he can, but has also to fight a battle for getting himself reinstated in service. The Courts cannot be oblivious to the fact that such legal adventure is costly and would eat up a large chunk of whatever meagre income that the employee may be able to make by getting any odd job. At the same time, no Court can be oblivious to the grim reality of unemployment pervading all stratas of the society. Therefore, we would not be in a position to conclude that the moment a person is sacked he can find alternate means of his wherewithal. In this situation, it would be unjust to insist upon a technical requirement of pleading and proof of absence of gainful employment by an employee who is wrongfully dismissed.

17) The judgment of Division Bench of this Court, in my view, cannot be read in support of an abstract proposition that in every case, backwages can always be granted in absence of pleadings and evidence about gainful employment. Mr. Kulkarni relied upon judgment of learned

Single Judge of this Court in *Bal Vidhya Prakashan* ((supra) in which it is held in paragraph 6 as under:

6. There is no infirmity in either the approach of the Labour Court or the conclusion arrived at by it. In the case of wrongful termination of service, reinstatement with continuity of service and back wages is a normal rule. Ordinarily, the complaining workman is merely expected to **plead or make a statement** before the adjudicating authority or the Court of the first instance, as the case may be, that he or she was not gainfully employed. If the employer contests the case of back-wages, it is for him to plead and prove by cogent evidence that the workman was gainfully employed or was getting wages equal to the wages he or she was drawing at the date of termination. The Supreme Court, in a recent judgment delivered in the case of Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya(D.Ed.), reported in AIR 2014 SC (Supp) 121, has laid down these propositions as firmly established. This law was correctly applied by the Labour Court in its impugned order. There is indeed no evidence led by the petitioners employer that respondent No.1 workman was gainfully employed.

(Emphasis added)

18) Again, judgment in *Bal Vidhya Prakashan* (supra), rendered in facts of that case, cannot be interpreted to mean that there can be evidence of absence of gainful employment without pleadings.

19) Even if the technicality of absence of pleadings in support of evidence of non-gainful employment is to be momentarily ignored, the facts of the present case are such that there is no warrant for award of backwages. No doubt, the employee was terminated without following process of law. However, he embroiled himself in criminal prosecution involving grave allegations. On account of his involvement in the criminal case, he remained absent from 29 March 2014 onwards for about one month. He applied for leave. Thereafter he was arrested on 20 May 2014 and remained in custody till 21 June 2014. On account of involvement in serious criminal case and absence from duty for considerable period during March to June-2014, the employer terminated

him from service. However, the employer failed to follow the procedure while dismissing the employee from service. Otherwise, it was a natural conduct of the employer to terminate the employee who remains absent for 4 long months and who is arrested for a serious crime involving allegations under POCSO Act. For the employer's failure to follow the procedure, reinstatement has already been granted. The employee cannot be further rewarded with backwages. The employer is not to be blamed in the present case as the employee had embroiled himself in a criminal case involving his private affairs.

20) The charge of absence cannot really be denied by the employee. It also appears that the employee had given false pretext to justify his absence. He made representation dated 15 April 2014 admitting that he had cited false pretext of sickness. It appears that intimation of arrest was also not given by the employee and the employer received intimation about his arrest from police on 16 May 2014. All these factors assume importance while determining entitlement of the employee for reinstatement. Therefore, leaving aside the issue of absence of pleadings, even otherwise, there was no warrant for award of full backwages in favour of the employee. In the present case, employee himself is responsible for his absence leading to his termination. The termination is the effect of twin acts of absence as well as involvement in a crime. In such circumstances, the employer cannot be made to suffer financial consequences when the employee is an architect of his own termination. He is already reinstated in service and if the employer is made to pay backwages for 10 years, the same would tantamount to rewarding the employee for his acts.

21) I am therefore, of the view that award of full backwages was clearly not warranted in the facts and circumstances of the present case. The Industrial Court has rightly set aside the direction of the Labour Court for award of full backwages from 20 May 2014. No error is therefore traced in the order of the Industrial Court.

22) However, the employee would still receive some amount towards backwages. The employee was directed to be reinstated by order dated 2 May 2024. He has however, been reinstated with substantial delay by letter dated 11 May 2026. Therefore, the employer is liable to pay full wages during the period from 2 May 2024 to 11 May 2026. His reinstatement order indicates that he is offered gross wages of Rs. 40,000/-. Therefore, the employer needs to pay him full backwages @ Rs. 40,000/- per month from 2 May 2024 to 11 May 2026.

23) I accordingly proceed to pass the following order:

- (i) Writ Petition (stamp) No.21261 of 2026 filed by the employer is dismissed as infructuous.
- (ii) Writ Petition No.8740 of 2026 filed by the employee is dismissed.
- (iii) The employer shall however pay full wages for the period from 2 May 2024 to 11 May 2026 to the employee calculated @ gross earning of Rs. 40,000/- per month within a period of two months, failing which there shall be interest @8% per annum on expiry of period of two months.

24) With the above directions both the Writ Petitions are **disposed of**.

[SANDEEP V. MARNE, J.]