

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1068 OF 2004

Kirloskar Brothers Ltd. and Anr. **...Petitioners**

V/s.

Rameshwar Domaji Patil and Anr. **...Respondents**

WITH
WRIT PETITION NO. 1352 OF 2004

Kirloskar Brothers Ltd. and Anr. **...Petitioners**

V/s.

Prabhakar Baloba Ingale and Anr. **...Respondents**

WITH
WRIT PETITION NO. 1032 OF 2004

Kirloskar Brothers Ltd. and Anr. **...Petitioners**

V/s.

Vijay Babanrao Dalvi and Anr. **...Respondents**

WITH
WRIT PETITION NO. 1065 OF 2004

Kirloskar Brothers Ltd. **...Petitioner**

V/s.

Sudhakar Murlidhar Bramhe and Anr. **...Respondents**

**WITH
WRIT PETITION NO. 1534 OF 2004**

Kirloskar Brothers Ltd. and Anr. **...Petitioners**

V/s.

Bhaskar Vasudeo Tandale and Anr. **...Respondents**

**WITH
WRIT PETITION NO. 1353 OF 2004**

Kirloskar Brothers Ltd. and Anr. **...Petitioners**

V/s.

Mr. Nandu Baburao Kondhalkar and Anr. **...Respondents**

**WITH
WRIT PETITION NO. 9862 OF 2003**

Mr. Vijay Babanrao Dalvi **...Petitioner**

V/s.

Kirloskar Brothers Ltd. and Anr. **...Respondents**

**WITH
WRIT PETITION NO. 9866 OF 2003**

Mr. Nandu Baburao Kondhalkar **...Petitioner**

V/s.

Kirloskar Brothers Ltd. and Anr. **...Respondents**

**WITH
WRIT PETITION NO. 9863 OF 2003**

Mr. Prabhakar Baloba Ingale **...Petitioner**

V/s.

Kirloskar Brothers Ltd. and Anr.

...Respondents

**WITH
WRIT PETITION NO. 9872 OF 2003**

Mr. Bhaskar Vasudeo Tandale

...Petitioner

V/s.

Kirloskar Brothers Ltd. and Anr.

...Respondents

**WITH
WRIT PETITION NO. 9858 OF 2003**

Mr. Rameshwar Domaji Patil

...Petitioner

V/s.

Kirloskar Brothers Ltd. and Anr.

...Respondents

Mr. Anand Pai with Mr. Vipul Patel, Mr. Sahil Sayyed & Ms. Lavanya Panicker i/b Haresh Mehta & Co. for the Petitioner in Writ Petition No. 1068/2004, Writ Petition No.1352 of 2004, Writ Petition No.1032 of 2004, Writ Petition No.1065 of 2004, Writ Petition No.1534 of 2004, Writ Petition No.1353 of 2004 & for Respondent No. 1 in Writ Petition No.9862 of 2003, Writ Petition No.9866 of 2003, Writ Petition No.9863 of 2003, Writ Petition No.9872 of 2003, Writ Petition No. 9858 of 2003.

Ms. Savita Suryavanshi, for Respondent No. 1 in Writ Petition No. 1068 of 2004 & for Petitioner in Writ Petition No. 9858 of 2003.

CORAM: SANDEEP V. MARNE, J.

Reserved On: 17 July 2026.

Pronounced On: 31 July 2026.

Judgment:

1) These are cross-petitions filed by the employer and the employees challenging the Awards passed by the Presiding Officer, Third Labour Court, Pune, in various References made at the instance of the employees. By the impugned Awards, the Labour Court has directed the employer to reinstate the workmen along with continuity of service and 75% backwages.

2) The Employer-Kirloskar Brothers Limited, used to operate a printing press at Pune, apparently for the purpose of printing the material needed for its various factories and establishments. There was a Binding Department in the press, in which six employees were employed. It is the case of the employer that, owing to losses incurred in the Binding Department, it had decided to shut down the same and to retrench all the six workmen. On 9 February 1991, a seniority list was displayed by the employer. On 20 February 1991, the retrenchment/termination notices were issued by the employer, providing the reasons for retrenchment. The retrenchment was effected on 12 March 1991. At the instance of the workmen, the Appropriate Government made References to Labour Court, Pune, which were registered as under:

- (i) Mr. Nandu Baburao Kondhalkar: Reference (IDA) No. 376 of 1991.
- (ii) Mr. Bhaskar Vasudeo Tandale: Reference (IDA) No. 378 of 1991.
- (iii) Mr. Vijay Babanrao Dalvi: Reference (IDA) No. 379 of 1991.

(iv) Mr. Sudhakar Murlidhar Brahme: Reference (IDA) No. 380 of 1991.

(v) Mr. Prabhakar Baloba Ingale: Reference (IDA) No. 381 of 1991.

(vi) Mr. Rameshwar Domaji Patil: Reference (IDA) No. 382 of 1991.

3) By impugned common Awards dated 29 April 2003, the Labour Court has answered the References in the affirmative by directing the employer to reinstate the six workmen with continuity of service along with 75 % backwages. Aggrieved by the Awards dated 29 April 2003, the employer has filed the present Petitions. By Order dated 23 March 2004, this Court admitted the Petitions and granted stay to the Awards on condition of the employer depositing in the Court the entire amount of backwages awarded by the Labour Court within four weeks.

4) It appears that the employer failed to deposit the amount of backwages within the stipulated time and filed Civil Application for seeking extension of time. By order dated 22 July 2005, the said Civil Application was disposed of not granting prayer for extension of time. However, this Court observed that the employer would have an option either to reinstate all the workmen in service or to pay the amount of monthly salary as if they were in service during pendency of the Petitions. It was directed that if reinstatement was not made within the period of two weeks, the employer shall calculate amount of monthly wages payable to the workers as if they were on duty and to deposit the same with the Registry and that it shall also continue to pay monthly salary to the workmen as if they were on duty from 1 August 2005, till the Writ Petitions are decided.

5) It appears that employer took out another Civil Application once again seeking extension of time for deposit of awarded some in terms of order dated 23 March 2004. However, after referring to the Order dated 22 July 2005, this Court rejected the said Civil Application. It appears that employer has thereafter deposited various amounts in five out of the six Petitions. It appears that in Writ Petition No. 1065 of 2004, no deposit is made by the employer.

6) In the meantime, 5 out of the 6 employees have also filed their individual petitions challenging the impugned Award dated 29 April 2003 to the extent of denial of 100% backwages. By order dated 23 March 2004 the Petitions have been admitted.

7) All the 11 Petitions were called out for final hearing on 23 April 2026, where the Advocate appearing for five workmen informed the Court that he was not in touch with the concerned workman. This Court, therefore, directed issuance of notices to the employees. Ms. Suryavanshi has appeared on behalf of the workman-Mr. Rameshwar Domaji Patil. She has informed the Court that the workmen Mr. Brahme and Mr. Tandale, have possibly expired and that the workman-Mr. Ingale is bedridden. She has submitted that though contact was established with Mr. Dalvi and Mr. Kondhalkar, they are unable to travel to the Court. Accordingly, this Court has requested Ms. Suryavanshi to assist the Court in canvassing submissions on behalf of all the employees as the Petitions are pending for the last 21/22 years and cannot be kept pending indefinitely.

8) Mr. Pai, the learned counsel appearing for Petitioner has submitted that the Labour Court has erred in answering the References in the affirmative. That the Labour Court has erroneously held that provisions of Section 25-F of the Industrial Disputes Act, 1947 (**ID Act**) are not complied with, ignoring the position that the employer paid wages for notice period along with other payments to the workmen. That once wages for notice period are paid, it is not necessary to indicate reasons for retrenchment. In support he relies on judgment of this Court in **Publicis Communication Private Limited Vs. S.T. Jadhav**¹.

9) He submits that the employer specifically took the defence of closure in its written statement. However, the said issue was not framed and in absence of framing of issue, the Labour Court could not have rendered findings thereon. In support he relies on judgment of this Court in **Hindustan Platinum Private Limited Vs. Ashok Ramchandra Solkar**². That Labour Court is bound by the terms of reference and could not have decided the issue of closure unless specifically referred, as held by Apex Court in **Delhi Cloth and General Mills. Company Vs. Workmen and others**³.

10) Mr. Pai further submits that only one workman, Mr. Dalvi, had filed evidence and the same cannot be adopted for all matters. He submits that the other workmen did not step into the witness box to establish their case. That evidence of one workman cannot be used for other References, since initial burden of proof is on the workman to demonstrate illegality in the orders and the same is not discharged in

1 W.P.(L) No. 24364 of 2022 decided on 8 January 2024

2 2019 SCC OnLine Bom 4964

3 AIR 1970 SC 919

other matters. That in any case non-examination of other employees leads to a situation where there is absence of evidence about they not being gainfully employed.

11) Mr. Pai further submits that the Labour Court has erroneously treated a statement in the deposition of management witness to be admission of getting the work done from outside at cheaper rates. That it was always employer's case that there was already a contractor who was working at the site since the year 1986 under the firm name Ms/ D.A. Dhawade, even prior to retrenchment. That the employer specifically laid evidence of losses suffered by the management. That there is evidence of absence of any binding work in the establishment and that the whole of the press is sold. That as of 19 June 2002, the press property itself was sold and that the unit does not exist. That the employer had produced profit and loss statements and balance sheets, in addition to sale of the property. That workman's witness admitted that there was no press at the site of the establishment at Mukundnagar, Pune, and that he had no idea about work carried out in the three factories. He also admitted about Mr. Dilip Dhawade being in service of the employer. Hence it is proved that though the balance sheet was consolidated, the binding department was identified as a distinct and separate unit.

12) Lastly Mr. Pai submits that the award of backwages is perverse as it ignores admission by the workman's witness that he was earning about Rs. 300-500/- per week. That no reasons are recorded by the Labour Court for award of backwages. That award of backwages is not automatic and it is necessary to prove absence of gainful employment. Mr. Pai would accordingly pray for setting aside of the impugned Awards.

13) Ms. Suryavanshi, the learned counsel appearing for the workman, Mr. Rameshwar Domaji Patil submits that the impugned Awards directing reinstatement and continuity does not suffer from any infirmity. That the workmen were terminated on false pretext of losses suffered by the employer. That no proof was produced to demonstrate suffering of losses. That the company produced only consolidated balance sheets prepared for all four branches of the Company. That the figure of loss of Rs. 31.10 million quoted by the Company was neither proved nor can be logically accepted. That the salaries paid to the workman was merely Rs. 1800/- per month and therefore it is beyond imagination that the company would suffer losses of Rs. 31.10 million on account of payment of salaries to the 6 workmen. That there is specific admission by company's witness of the work being carried out on contract basis after the termination. That on 4 November 1995, an advertisement was issued for the post of binder which was brought on record by way of an amendment. That the Company admitted that Mr. Dhawade was doing the work of binding thereby belying the story of closure of binding department. That printing division is part and parcel of the Company and there is no question of selective closure of only Binding Department of the Printing Division.

14) Ms. Suryavanshi further submits that retrenchment is not as per Section 25-F of the ID Act as the principle of 'last come first go' was not followed. That proper compensation was not paid nor due procedure was followed. That Company's Printing Division had employed only 60 workers and at the time of retrenchment, more than 100 employees were working with the employer.

15) Ms. Suryavanshi further submits that, the employer has violated the order passed by this Court on 22 July 2005 by neither reinstating the employees nor depositing their full salary. That what is deposited in this Court is only 75% wages calculated on the basis of wages drawn in the year 1999. That yearly increments are not factored in while making the deposit.

16) She submits that, so far as workman, Mr. Rameshwar Domaji Patil, is concerned, he is entitled to amount of approximately Rs. 20 lakhs towards backwages, Rs. 2 lakhs towards bonus and the Rs. 1,75,000/- towards gratuity, total amounting to Rs. 23,75,000/- in addition to provident fund.

17) Ms. Suryavanshi further submits that the Labour Court ought to have awarded 100 % backwages to the workers when their termination was found to be illegal. That no reasons are recorded for restricting the backwages to only 75%. She accordingly prays for allowing the Petitions filed by the employees.

18) Rival contentions urged on behalf of the parties fall my consideration.

19) The employer effected retrenchment of six workmen working in the Binding Department of its Printing Division with effect from 12 March 1991. The termination orders were issued on 20 February 1991, which read thus:

We have decided to terminate your contract of service with us by way of retrenchment for the reasons which are enclosed herewith.

Accordingly your services stand terminated with effect from the closing hours of 20th February 1991. Along with this Order of Termination, Reasons for Termination and a Statement of Accounts are enclosed as Annexure I & II. You are also being paid one month's wages in lieu of notice and 15 days wages per completed year of service as retrenchment compensation in addition to your legal dues. A cheque for Rs.17567.74 dated 20th February 1991 drawn on Bank of India, Poona is enclosed.

20) In ANNEXURE-I to the termination orders, detailed reasons were recorded, which are as under:

Kirloskar Press (hereinafter referred to as the "Press" for the sake of brevity) is a Division of Kirloskar Brothers Ltd. The said Press is registered under the Factories Act 1948 and it employs 44 people. In this press there are following Departments.

1. Photo & Process Deptt.
2. Production Office Dept.
3. Binding Dept.
4. Offset Dept.
5. Letter-Press & Treadle Dept.
6. Agriculture Dept.

This Press has been running in losses for the past several years. The total carry forward losses of the press are to the tune of Rs.31.10 million. It was observed that of the various departments of the Press, Binding Department was losing the maximum amount of money. The wages paid to the employees in the said Dept. are extremely high (average wage Rs.2160/-). On the other hand similar work can be done in other establishments in and around Pune within Rs.950/ to Rs.1000/-, which is less than half the wages. Under the circumstances it has been observed that to continue with the Binding Dept. is not a financially viable proposition. The Press is therefore left with no option but to retrench the workmen employed in the Binding Dept. and close the activities of the said Dept.

In accordance with the above said decision, a seniority list was displayed by the Press on 9th February 1991. The services of all the workmen employed in the Binding Dept. are being terminated with effect from the close of working hours of 20th February 1991. These Workmen shall be given an Order of Termination, these Reasons for Termination and a Statement of Accounts. In addition to this, the workmen shall be paid one month's wages in lieu of notice and 15 days wages per completed year of service as retrenchment compensation in addition to their legal dues.

21) The terminated employees were paid wages for the month of February 1991 (20 days) of Rs.1,803.50/-, earned leave wages Rs.1,633.50/-, one month notice pay of Rs.1,803.50/- and compensation of Rs.13,526.25/-. This is how total amount of Rs. 17,567.74/- was offered to the workman Mr. Nandu Baburao Kondhalkar. It appears that, before effecting the terminations, the employer published, department wise seniority list of employees employed in Kirloskar Press. It appears that in the Binding Department only six workers, who are ultimately retrenched were working.

22) The employer thus effected terminations/retrenchment by recording detailed reasons. According to Mr. Pai, since notice wages are paid, it is not necessary to give reasons for termination. In support, he has relied on the provisions of Section 25-F of the ID Act and judgment of this Court in ***Publicis Communication Private Limited*** (supra) in which it is held in para 13 and 14 as under:

13. Coming to the second reasoning adopted by the Labour Court for setting aside the retrenchment order, it is seen that the Labour Court has expected Petitioner to record reasons for retrenchment in letter dated 9 January 2018. Section 25F of the ID Act reads thus :

“25-F Conditions precedent to retrenchment of workmen.-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until--

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice :

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]”

Thus, under Section 25F, the employer has an option to retrench services of a workman by either giving one month’s notice in writing or by paying wages for notice period in lieu thereof. The requirement of indicating reasons for retrenchment would be applicable only in the event of employer opting to issue one month’s notice in writing. The word used between two eventualities is ‘or’ making it clear that the two operate distinctively. Thus, when the employer opts for retrenchment of services by paying wages in lieu of notice, the requirement of recording reasons does not become mandatory. I am fortified in my view by the Judgments of the Orissa High Court and Gujarat High Court. In *Babaji Charan Swain and others* (supra), the Orissa High Court has held in paragraph 4 of the Judgment as under :

“4. Apart from the plain language of the clause, the matter is concluded by several authorities, and no contrary decision has been brought to our notice. In *Workmen of Shillong Hydro Electric, Ltd. v. State of Assam and others* [A.I.R. 1964 Assam. 66 = 1965—II L.L.J. 619] their lordships observed thus :

“In fact when one month’s salary is allowed in lieu of the notice, no notice need to be given.”

This in very clear terms supports the contention that both the parts of Cl. (a) are in the alternative. The same view has been taken in *Bombay Union of Journalists and others v. State of Bombay and another* [A.I.R. 1964 S.C. 1617 = 1964—I L.L.J. 351]. At p. 356 their lordships said that S. 25F (a) provides that the workman can be paid, in lieu of such notice, wages for the said period. The same view has been taken in *National Iron and Steel Company Ltd. and others v. State of West Bengal and another* [A.I.R. 1967 S.C. 1206 = 1967—II L.L.J. 23]; and *Viney Kumar Majoo v. State of Rajasthan and others* [A.I.R. 1968 Raj. 227=1968 —II L.L.J. 398]. At pp. 405-406 of the Rajasthan case, the following passage occurs :

“... One month’s notice pay is required to be paid when an employer does not wish to serve the advance notice as required, but in lieu thereof he chooses to pay one month’s wages. Now it may be open to an employer not to give a notice, but in that event it will be incumbent on him to pay one month’s wages in lieu of notice, that is, for the period of the notice. This is to be done before the actual retrenchment. It is to precede the retrenchment and not to follow it...”

In *Dabhoi Nagarpalika* (supra), the Gujarat High Court has held in paragraphs 11 and 12 as under :

“11. Learned counsel for the respondents further urged that the requirement of giving reasons under sub-section (a) of Section 25F of the Act is mandatory. Where one month's notice is not resorted to, the shortness of the notice period may be compensated by payment of wages in lieu of notice. Requirement indicating reasons for retrenchment which forms part of mandatory conditions of sub-section (a) is independent of notice and still has to be complied with. Order of termination must indicate the reasons for retrenchment.

12. The argument on the first flush appears to be facile, but it does not stand closure scrutiny. Sub-section (a) of Section 25F of the Act postulates two alternatives. That is to say that services can be terminated by giving one month's notice in writing indicating reasons for retrenchment is effective after the expiry of the period of notice. Alternately, an employer can resort to termination simpliciter by paying wages for the period in lieu of such notice, that is to say, alternately, the requirement of giving notice is altogether dispensed with. If the employer resorts to make payment of wages in lieu of notice at the time of retrenchment, if the notice is not at all is required to be given, the question of there being reasons in writing in that notice also would not survive. Accepting the contention of the learned counsel for the petitioner would mean that the condition, namely, recording reasons for retrenchment in the notice will be required independent of clauses (a) and (b) by inserting a written reason dehors the notice itself.”

14. In my view, therefore, the Labour Court has not correctly appreciated the provisions of Section 25F of the ID Act and has erroneously expected the Petitioner to communicate the reasons for retrenchment. Non-communication of reasons for retrenchment is the reason for setting aside retrenchment order in all cases except that of S.T.Jadhav where additional reason of non-payment of adequate compensation is also considered by the Labour Court.

23) True it is that under Section 25-F of the ID Act, the employer has an option to retrench a workman by giving one month's notice in writing or by paying one month's wages for notice period in lieu thereof. The requirement of indicating reasons for retrenchment is applicable only in the event of employer opting to issue one month's notice in writing. Ordinarily, therefore, when employer opts for retrenchment of services by paying wages in lieu of notice, the requirement of recording reasons does not become mandatory.

24) However, in the present case, the employer, on its own, thought it appropriate to record detailed reasons for termination even though notice wages were paid to the workman. In my view, the judgment of this Court in ***Publicis Communication Private Limited*** is not of assistance to the employer. In that case, the Labour Court had expected the employer to record reasons in the termination order even after payment of notice wages. The judgment is not an authority on the proposition that if reasons are recorded in retrenchment order effected by paying notice wages, the Court/Tribunal is refrained from determining correctness of those reasons.

25) As observed above, the employer itself recorded detail reasons for terminating the services of the employees and did not effect retrenchment by innocuous order by paying notice wages. Once reasons are recorded, the Tribunal is justified in going through those reasons. In my view, therefore, no error can be traced in the approach of the Labour Court in going into the issue of correctness of the reasons recorded by the employer while retrenching the services.

26) The employer recorded a reason of sufferance of heavy losses for terminating the services of the six workmen. It was recorded in the termination order that the total carry-forward losses of the Press were to the tune of Rs. 31.10 million and that, out of the various departments of the press, the Binding Department was losing the maximum amount of money. It was further held that extremely high wages of around Rs. 2,160/- per month was being paid to the six workers, whereas what was paid in Pune City for similar work was only Rs. 950/- to 1,000/-. It was therefore observed that it was not financially viable to run the Binding

Department, and it was decided to close the activities of the said department.

27) The employer, however, failed to prove before the Labour Court, by cogent evidence about sufferance of losses of Rs. 31.10 million. The balance sheets, profit and loss accounts, etc. produced before the Labour Court turned out to be consolidated accounts of the Company-Kirloskar Brothers Limited. Printing was one of the small divisions of over all activities of Kirloskar Brothers Limited. The employer thus failed to produce evidence of sufferance of losses as claimed in termination orders. I do not find any element perversity in the finding recorded by the Labour Court about inability of the Company to prove sufferance of losses in the Printing Division.

28) It must also be noted here that if the entire press was suffering losses it was illogical to shut down only Binding Department while continuing Photo and Process Department, Production Office Department, Sale Department, Letter Press And Trader Department and Agricultural Department. The company could not establish before the Labour Court as to why selective shutting of Binding Department would have cut down the losses.

29) As rightly submitted by Ms. Suryavanshi payment of salary of about Rs. 1850/- per month to six workers ($\text{Rs. } 1850 \times 6 = \text{Rs. } 11,100$) could not have saved the alleged losses running into Rs. 31.10 million, which is about Rs. 3.11 crores. It therefore becomes difficult to believe that by saving total monthly salary of Rs. 11,000/-, the Company would have cut down losses of Rs. 3.11 crores.

30) More importantly, the Company's witness gave emphatic admissions before the Labour Court during the course of his cross examination that after terminating the workers, binding work was given to outside parties. The relevant part of his cross examination reads thus:

I have not produced the data which shows the binding department was in loss, before this court, in the year 1990-1991. On the data which was prepared, the company came to the conclusion that if they give the binding works to outside parties, it will be cheaper one. Therefore, the binding works was given to outside parties. Six workers were working in the Binding Department.

31) Thus, it was established, on account of admissions given by Company's witness, that the Company terminated the services of six binders and outsourced the work to outsiders. No evidence was produced as to how such outsourcing of the work would reduce financial liability of the Company. I, therefore, do not find any reason to interfere in the findings recorded by the Labour Court that the activity of binding was not closed and that the press continued after terminations, with binding work been performed by outsiders.

32) Mr. Pai has strenuously contented that, since defence of closure was specifically taken in the written statement, it was incumbent for the Labour Court to frame an issue in that regard. He has placed reliance on judgment of this Court in ***Hindustan Platinum Private Limited*** (supra). In my view the submission is without any substance. The employer never raised any objection about non-framing of issue relating to the closure. If the employer wanted to prove closure, it ought to have insisted for framing of the said issue. However, the employer participated in the inquiry before Labour Court without insisting on framing of the issue

relating to closure. It is only at the final hearing stage of the Petitions that complaint about non framing of issue relating to closure is sought to be raised. This aspect is not even pleaded in the Petitions.

33) Even otherwise, the Labour Court has conducted inquiry into the issue of closure. It has arrived at a finding that the Binding Department was actually not closed and that the work was outsourced to outsiders. This finding is based on admission given by Company's witness. Thus, the inquiry into the issue of closure has indeed been conducted by the Labour Court. The employer is seeking to blow hot and cold in the same breath. It contends that inquiry into the issue of closure was mandatory on account of defence raised in the written statement. However, after noticing that the inquiry is indeed conducted and that the result of such inquiry has gone against it, it turns around and questions the conduct of such inquiry on the ground that a specific issue was not framed. I, therefore, do not find any valid reason to interfere in the impugned Award only on account of non-framing of issue relating to closure.

34) Considering the above circumstances, in my view, the Labour Court has rightly set aside termination/retrenchment orders of the six workmen.

35) Coming to the aspect of backwages, it appears that no specific reasons are recorded in the Awards either for awarding 75% backwages or for not awarding 100% backwages. The relevant findings on the aspect of backwages are to be found in para 26 of the impugned Award, which reads thus:

26. The Second Party prayed for reliefs. The Second Party has succeeded in proving that his services were illegally terminated by the First Party.

He has prayed for reliefs of reinstatement continuity of service and backwages. The First Party is taking the work from outside parties. When the retrenchment is held to be illegal, the Second Party is entitled for reliefs of reinstatement and other reliefs. Therefore, I hold that the Second Party is entitled for relief of reinstatement, continuity of service with 75% of the back wages.

36) Thus, the direction for payment of backwages is unsupported by any reasons. It appears that only one worker, Mr. Vijay Babanrao Dalvi had examined himself on behalf of all the six workers. In his cross examination he admitted as under:

I have no documentary evidence to show that I made attempt to get employment. It is correct to say that I have worked as binder with different press I was getting wages in range of Rs.300-500 per week.

37) Thus, there was some evidence before the Labour Court about gainful employment of the workman Mr. Dalvi to certain extent. However, this aspect is totally ignored by the Labour Court while making an order for backwages. Also not considered by the Labour Court is the factor that the other five workmen shied away from witness box and did not lead any evidence about absence of gainful employment.

38) If retrenchment is found to be illegal, grant of 100% backwages cannot be a natural or automatic consequence. It is necessary that the workman leads evidence of absence of gainful employment. Five out of the six workers, unfortunately, did not lead any evidence about absence of gainful employment. This may have happened on account of long pendency of References, which were decided 12 years after their terminations. The sole witness, Mr. Dalvi, examined on behalf of the workmen, gave admission of earning amounts of Rs. 300-500/- per week while working as binder in different press. The deposition of the workman Mr. Dalvi is recorded on 12 June 2002. The amount of Rs. 300-

500/- per week would translate into monthly sum of Rs. 1200-2000/- per month. It appears that the said workman was drawing wages of Rs. 1860/- at the time of termination in February 1991. Therefore, the amount of Rs. 1,200-2,000/- earned by him in 2002 cannot be treated as earning of equivalent amount, considering the inflation. In my view, therefore, it is difficult to hold that even the workman Mr. Dalvi was gainfully employed for earning full wages which he would have earned had he continued in employment of the Company. He has earned some wages and therefore award of 75% wages is not in order.

39) The six workmen were terminated on 20 February 1991. The references were decided on 29 April 2003. Thus, after 29 April 2003 till the workers attained the age of retirements, they would have received 100% backwages. As a matter of fact, the stay order granted by this Court while admitting the Petition on 23 March 2004 was subsequently vacated by order dated 22 July 2005 which reads thus:

While granting Rule on Writ Petition No.1032 of 2004 this Court had granted interim relief in terms of prayer clause (b) therein on the condition that the petitioner deposited with the Registry of this Court the entire amount of backwages awarded by the Labour Court within a period of four weeks. This has not been done and, therefore, the order of interim relief would automatically stand vacated as of now.

By this application the Petitioner-Management has prayed for extension of time to deposit the amount and condone the delay caused in depositing. It would not be expedient to entertain such an application. However, the petitioner-company has an option either to reinstate the respondent-workman in service forthwith or pay him the amount of monthly salary as if he is in service during the pendency of the writ petition. If the respondent-workman is not reinstated within a period of two weeks from today, the petitioner-company shall calculate the amount of monthly wages payable to the workman as if on duty and deposit the same with the Registrar of this Court within a period of four weeks and it shall continue to pay the monthly salary to the workman as if on duty from 1st August 2005 till the writ petition is decided.

Civil Application stands disposed off accordingly.

40) Thus, this Court had specifically directed the Company to deposit full backwages in this Court and to continue to deposit the same during pendency of the Petition. However, it appears that the Company has deposited only 75% backwages calculated on the basis of wages earned in February 1991. It appears that the employers did not deposit any amount in respect of the workman Mr. Brahme.

41) Mr. Pai has place on record the fact that the age of retirement for the workers was 58 years. He has given the dates on which they would have crossed the ages of superannuation, which are as under:

Name of Employee	Date Of Retirement
Mr. Nandu Baburao Kondhalkar	31 May 2015
Mr. Bhaskar Vasudeo Tandale	06 October 2010
Mr. Vijay Babanrao Dalvi	10 October 2012
Mr. Prabhakar Baloba Ingale	2006
Mr. Rameshwar Domaji Patil	2009
Mr. Sudhakar Murlidhar Brahme	Not Known

42) Thus all the six employees have already crossed the ages of retirement long back and there is no question of their reinstatement. As held above though the terminations are illegal, award of 75% backwages to them is erroneous.

43) Considering the above position, in my view, it would be appropriate to award lump-sum compensation to the six workmen instead of paying them the backwages. As observed above, the employees

would have been entitled to less than 75 % backwages from the date of termination till the date of Awards. After the Awards, the workers would have drawn full wages up to the dates of their retirements. Keeping in mind these factors, the amount of lump sum compensation needs to be determined.

44) As observed above Petitioner has deposited certain amounts in respect of 5 out of 6 employees, which have been deposited in interest bearing deposits. The principal amount deposited and the maturity value is as under:

Date of Deposit	Name of Employee	Amount Deposited	Maturity value
13/09/2005	Mr. Nandu Baburao Kondhalkar	Rs. 2,35,543/-	10,77,094/-
13/09/2005	Mr. Bhaskar Vasudeo Tandale	Rs. 1,93,115/-	8,83,070/-
13/09/2005	Mr. Vijay Babanrao Dalvi	Rs. 2,40,086/-	6,17,407/-
13/09/2005	Mr. Prabhakar Baloba Ingale	Rs. 2,44,630/-	8,60,568/-
13/09/2005	Mr. Rameshwar Domaji Patil	Rs. 2,13,838/-	9,77,270/-

45) In my view, each of the worker can be permitted to withdraw the entire maturity amount, which shall constitute the lump-sum compensation payable to them. It appears that no deposits are made in case of the worker Mr. Brahme, who is apparently no more. Mr. Brahme was the senior most worker in the Press working since 11 May 1970. Considering this position, I deem it appropriate to award compensation of Rs. 10,00,000 to the legal heirs of Mr. Brahme.

46) I accordingly proceed to pass the following order:

- i) The common Award dated 29 April 2003 passed by Labour Court, Pune is modified.
- ii) It is directed that each of the six workmen shall be entitled to lump-sum compensation in lieu of reinstatement, backwages and all of the statutory service and retirement benefits.
- iii) The amount of compensation in respect of five workmen Mr. Nandu Baburao Kondhalkar, Mr. Bhaskar Vasudeo Tandale, Mr. Vijay Babanrao Dalvi, Mr. Prabhakar Baloba Ingale and Mr. Rameshwar Domaji Patil would be the entire deposited amount with accrued interest. In case of the workman Mr. Sudhakar Brahme, the lump sum compensation shall be in the sum of Rs. 10,00,000 which amount shall be deposited in this Court within 4 weeks and the legal heirs of Mr. Bramhe shall withdraw the deposited amount with interest accrued thereon.
- (iv) The concerned workmen/their legal heirs shall withdraw the entire deposited amounts along with accrued interest from this Court.

47) With the above directions, all the Petitions are disposed of. Rule is made partly absolute in Writ Petitions Nos. 1068 of 2004, 1352 of 2004, 1032 of 2004, 1534 of 2004, 1353 of 2004 and 1065 of 2004. Rule is discharge in Writ Petition Nos. 9858 of 2003, 9862 of 2003, 9863 of 2003, 9866 of 2003 and 9872 of 2003. There shall be no order as to costs.

NEETA
SHAILESH
SAWANT

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NEETA SHAILESH
SAWANT
Date: 2026.07.31
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[SANDEEP V. MARNE, J.]