



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13075 OF 2025

M/s. Prabhodhan Prakashan Private Ltd.

....Petitioner

V/S

1. Disha Shantaram Salvi

2. State of Maharashtra

....Respondents

Mr. Vachan Bodke with Ms. Kanchan Kojage i/b V & M Legal *for the Petitioner.*

Mr. K.P. Anilkumar with Ms. Priyanka Kumar and Mr. Chinmay Apte *for Respondent No.1.*

Mr. A.C. Bhadang, AGP *for Respondent/State.*

CORAM : SANDEEP V. MARNE, J.

RESERVED ON: 21 JULY 2026.

PRONOUNCED ON : 28 JULY 2026.

J U D G M E N T :

1. By this Petition, the Petitioner-Employer has challenged the Award dated 7 April 2025 passed by the learned Presiding Officer, 8th Labour Court, Mumbai in Reference (IDA) No.102 of 2022. The Labour Court has directed the Petitioner to reinstate Respondent No.1 with continuity of service and full backwages from the date of termination till her reinstatement.

2. Petitioner is engaged in the field of publication of newspapers and journals in Marathi and Hindi languages in the State of Maharashtra. Respondent No.1 was appointed as Accounts Officer in the Accounts

Department of the Petitioner-Employer by appointment order dated 7 March 2013. She was confirmed in service by office order dated 28 January 2015. According to the Petitioner-Employer, Respondent No.1 was working under National Head, Finance and she was performing work of administrative nature. She was later posted as Accounts Officer-Recovery. Petitioner-Employer contends that four subordinates were working under her and reporting to her. That she used to sign the conveyance vouchers of her subordinates as well as sanction leaves to them. Respondent No.1 was proceeded on sanctioned medical leave from 4 December 2020 to 31 March 2021. According to the Petitioner, when she reported back to work, Respondent No.1 was not in a position to perform her official duties satisfactorily. Therefore, by notice dated 14 May 2021, services of Respondent No.1 were terminated.

3. At the instance of Respondent No.1, the appropriate Government made a Reference to 8th Labour Court, Mumbai for adjudication of demand of Respondent No.1 for reinstatement, continuity and backwages. Respondent No.1 filed her Statement of Claim, which was resisted by the Petitioner by filing its Written Statement. Respondent No.1 examined herself. Petitioner-Employer examined its witnesses Mr. Vivek Tatojirao Kadam, Director. After considering the pleadings, documentary and oral evidence, the Labour Court has answered the Reference in the affirmative directing reinstatement of Respondent No.1 with continuity of service and full backwages from the date of termination till the date of reinstatement. Aggrieved by the Award dated 7 April 2025, the Petitioner has filed the present Petition.

4. Mr. Bodke, the learned counsel appearing for Petitioner has submitted that the Labour Court has grossly erred in upholding the status of Respondent No.1 as a workman under Section 2(s) of the Industrial Disputes Act, 1947 (**ID Act**). He submits that Respondent No.1 was working as Accounts Officer and was in charge of the Accounts Department and that therefore, her employment was in managerial and supervisory capacity. That she had subordinates working under her. That she had authority to sanction conveyance allowance to them. That she has sanctioned leave of various workers from time to time. That she has also functioned as Recovery Officer of the Petitioner-Employer. He relies on letters written by her to the customers of the Petitioner-Employer seeking recovery of amounts due for advertisement in the newspapers. He takes me through the cross-examination of Respondent No.1 to demonstrate that there are admissions of subordinates working under Respondent No.1 and she taking decisions for payment of conveyance expenses. He therefore submits that Respondent No.1 does not satisfy the tests for being a workman under Section 2(s) of the ID Act. That therefore, direction for reinstatement and backwages granted by the Industrial Court are expressly erroneous. He further submits that Respondent No.1 was required to be terminated from service on account of her inability to perform the work after recovery from the medical ailments. That Respondent No.1 did not lead any evidence of absence of gainful employment. That the Labour Court has not recorded any reasons for awarding backwages to her.

5. Mr. Bodke relies on judgment of the Apex Court in **Lenin Kumar Ray vs. Express Publications (Madurai) Ltd.**¹ in support of his contention that an Assistant Engineer supervising work of Junior Engineers is held to be not a workman. He also relies on judgment of this Court in **Standard Chartered Bank vs. Vandana Joshi and Anr.**² in support of his contention that if key responsibilities assigned include areas of generating new business, participation in branch sales etc., the employee cannot be treated as a workman within the meaning of Section 2(s) of the ID Act. He therefore prays for setting aside the impugned Award.

6. Mr. Anilkumar, the learned counsel appearing for Respondent No.1 opposes the Petition. He submits that the Labour Court has rightly upheld the status of Respondent No.1 as a workman. That designation of Accounts Officer given to Respondent No.1 cannot decide her status and that the Labour Court has rightly taken into consideration the nature of duties performed by her for upholding her status as workman. He takes me through the admissions given in the cross-examination of the Petitioner's witness to demonstrate that Respondent No.1 did not have any independent authority to sanction conveyance expenses or leaves. That there are express admissions given by the witness that Respondent No.1 used to function strictly in accordance with directions given by the Director. That Respondent No.1 used to mainly perform clerical work relating to accounts without having any independent authority to take decisions relating to the establishment of the Petitioner. That therefore,

¹ 2024 SCC OnLine SC 2987

² 2010 (2) Mh.L.J. 22

there is no material on record to infer employment of Respondent No.1 in managerial, administrative or supervisory capacities. Mr. Anilkumar relies on judgment of Apex Court in **National Engineering Industries Ltd. vs. Shri Kishan Bhageria and others**³ in support of his contention that internal auditor of the Company with duties mainly to report or check up without any authority to take decision and bind the Company thereby is held to be a workman. He also relies on judgment of this Court in **Kulwant Singh vs. Reliance Petrochemical Ltd. and Another**⁴ in support of his contention that nomenclature of the post is irrelevant and that what needs to be seen is the nature of duties performed by the employee. He prays for dismissal of the Petition.

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

8. Respondent No.1-employee was engaged as Accounts Officer in the Accounts Department of Petitioner-Publication by appointment order dated 7 March 2013. After completion of period of probation, she was confirmed in service with effect from 28 January 2015. Her last drawn salary was Rs.35,500/ per month. Respondent No.1 availed medical leave for the purpose of knee surgery from 4 December 2020 and she reported back for work on 31 March 2021. By letter dated 4 May 2021, the Petitioner informed Respondent No.1 that as she was not physically fit there were limitations on her working and in that situation, there was no work available to be assigned to her. Respondent No.1

³ 1988 (Supp) SCC 82

⁴ 2000 (3) LLN 887

submitted a reply thereto by letters dated 10 May 2021 and 12 May 2021. Thereafter, Petitioner was terminated by letter dated 14 May 2021. Validity of termination order dated 14 May 2021 was subject matter of challenge in Reference (IDA) No.102 of 2022 made to the Labour Court at the instance of the Respondent-Employee.

9. The main defence of Petitioner before the Industrial Court was that Respondent No.1 was not a workman within the meaning of Section 2(s) of the ID Act. Since no enquiry is conducted before terminating the services of Respondent No.1, answer to issue about status of Respondent No.1 became the key for deciding the Reference by the Labour Court. Labour Court has answered issue No.1 relating to status of Respondent No.1 as a workman in the affirmative.

10. According to the Petitioner, Respondent No.1 was appointed as Accounts Officer (लेखा अधिकारी) by letter dated 7 March 2013. Her consolidated wages at the time of her initial appointment were Rs.30,000/- per month in addition to reimbursement of amount of Rs.1,000/- towards mobile phone expenditure. She was confirmed in service as Accounts Officer by letter dated 28 January 2015 w.e.f. 1 January 2015 and her monthly wages were increased to Rs.31,500/- in addition to reimbursement of expenditure of Rs.1,000/- for mobile phone. From 1 February 2017, the consolidated wages of Respondent No.1 were increased to Rs.34,000/- and w.e.f. 1 September 2018, the same were increased to Rs.34,500/-. Letter dated 31 October 2019 indicates that Respondent No.1 was transferred from Accounts

Department to Recovery Department and her designation was changed to 'Accounts Officer-Recovery'.

11. By now, it is well-settled position that mere nomenclature of the post does not decide status of a person as a workman. The crucial test to be applied is about the nature of work performed by the concerned employee. Reliance by Mr. Anilkumar on judgment of this Court in **Kulwant Singh** (supra) in this regard is apposite. According to the Petitioner-Employer, Respondent No.1 had certain workers employed under her whose work she used to supervise. This aspect is admitted by Respondent No.1 in her cross-examination in which she stated that "*It is true that; Mr. Sanjay Lanjekar, Mr. Mahesh Bandawalkar, Mr. Rajan Shigwan and Mr. Milind Sarfare were working as my subordinates and were reporting to me. It is true to say that; without my approval, they were not getting conveyance expenses.*"

12. Petitioner has relied upon leave applications submitted by the concerned staff working under the Respondent No.1. It appears that in the leave application form, Respondent No.1 signed as Head of the Department. However, though signature of Respondent No.1 is reflected on various leave applications, it is difficult to draw a definitive conclusion that she had authority to sanction leaves. This is clear from the fact that the leave application is in two parts. The first part is to be filled in and signed by the applicant with Respondent No.1 endorsing her signature as Head of Department. However, second part of the application contained space for decision of the leave application. It is difficult to infer on the basis of leave applications that Respondent No.1

had the exclusive authority to sanction the leaves. The Labour Court has correctly appreciated this position and has held that there was no evidence of Respondent No.1 sanctioning or rejecting the leave applications and that Respondent No.1 was not vested powers in respect of sanction of leave.

13. Mr. Bodke has strenuously relied on certain vouchers by which conveyance allowance was sanctioned to the workers. On those vouchers, Respondent No.1 has signed in capacity of Head of the Department. Here again the Labour Court has held that there is space for signature of authorized signatory who apparently had the power to sanction the conveyance allowance. The admission given by the Respondent No.1 in her cross-examination that without her approval the four employees were not getting conveyance expenses cannot be read to mean as if Respondent No.1 had independent power to sanction payment of conveyance expenses.

14. I am in broad agreement with findings recorded by the Labour Court with regard to absence of authority in Respondent No.1 to sanction leave or to sanction payment of conveyance allowance.

15. Though an admission appears to have been given by Respondent No.1 that without her approval, the four employees were not receiving conveyance expenses, there also appears to be a direct admission by Petitioner's witness that Respondent No.1 used to work as per his instructions. Thus, far from proving that Respondent No.1 had independent authority to take decisions and to bind the Petitioner-

Employer with her decisions, an express admission was given by Petitioner's witness that Respondent No.1 used to work as per his instructions. It therefore cannot be held that Respondent No.1 was engaged in managerial, administrative or supervisory capacity. Though she carried designation of Accounts Officer and Accounts Officer-Recovery, the predominant nature of her duties was clerical.

16. In *National Engineering Industries Ltd.* (supra), the Apex Court has dealt with the issue of status of Internal Auditor engaged in the company. The Apex Court found that the employee was mainly reporting and checking up on behalf of the management. The Apex Court held in paragraphs 6, 7 and 9 of the judgment as under:

6. In *Burmah Shell Storage & Distribution Co. of India v. Burmah Shell Management Staff Association* [(1970) 3 SCC 378] this Court observed that a workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other types of work. Therefore, in determining which of the employees in the various categories are covered by the definition of "workman" one has to see what is the main or substantial work which he is employed to do. In *Punjab Cooperative Bank Ltd. v. R.S. Bhatia* [(1975) 4 SCC 696] it was held that the accountant was supposed to sign the salary bills of the staff even while performing the duties of a clerk. That did not make the respondent employed in a managerial or administrative capacity. The workman was, therefore, in that context rightly held as a clerk.

7. In *D.P. Maheshwari v. Delhi Administration* [(1983) 4 SCC 293] the question whether a person was performing supervisory or managerial work was the question of fact to be decided bearing in mind the correct principle. The principle therefore is, one must look into the main work and that must be found out from the main duties. A supervisor was one who could bind the company to take some kind of decision of behalf of the company. One who was reporting merely as to the affairs of the company and making assessment for the purpose of reporting was not a supervisor. See in this connection *Black's Law Dictionary*, Special Deluxe, Fifth Edition. At Page 1290, "Supervisor" has been described, inter alia, as follows:

“In a broad sense, one having authority over others, to superintend and direct.

The term ‘supervisor’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

9. In the instant case the evidence has been summarised by the Division Bench. Reference may be made to pp. 65, 73, 80, 84 to 94, 95,96 and 97 of the paper book which indicate the nature of duties performed by respondent 1, herein. His duties were mainly, reporting and checking up on behalf of the management. A reporter or a checking clerk is not a supervisor. The respondent herein does not appear to us to be doing any kind of supervisory work. He was undoubtedly checking up on behalf of the employer but he had no independent right or authority to take decision and his decision did not bind the company. In that view of the matter keeping the correct principle of law in mind the Division Bench has come to the conclusion taking into consideration the evidence recorded before the Labour Court that the respondent is a workman and not a supervisor. That conclusion arrived at in the manner indicated above cannot, in our opinion, be interfered with under Article 136 of the Constitution. It is not necessary for our present purpose to set out in extenso the evidence on record as discussed by the Division Bench. Our attention was, however, drawn by the counsel for the respondent to certain correspondence, for instance the letter at page 65 of the paper book bearing the date May 14, 1976 where the respondent reported that certain materials were lying in stores department in absence of any decision. It was further reiterated that on inspection of the pieces those pieces were found cracked. Similarly, our attention was drawn to several other letters and we have perused these letters. We are of the opinion that the Division Bench was right that these letters only indicated that the report was being made of the checking done by the respondent. A checker on behalf of the management or employer is not a supervisor.

17. In the present case as well, it is difficult to conclude that Respondent No.1 had any independent power to make decision on behalf of the Petitioner-Employer. Merely because she has written letters to persons publishing advertisements in newspapers, the same would not *ipso facto* convert nature of her duties into managerial or supervisory. In

one of the letters, Respondent No.1 mentioned that "सदर थकीत रकमेबाबत वरिष्ठांकडून वारंवार विचारणा होत आहे". This indicates that she was writing letters on the basis of instructions received by her from superior officer.

18. Reliance by Mr. Bodke on judgment of the Apex Court in ***Lenin Kumar Ray*** (supra) is misplaced. In that case, an Assistant Engineer was found to be supervising the work of two Junior Engineers working under him. The employees therein had given admission of supervisory nature of duties. The employee was an executive of the management. In the light of these peculiar facts, the Apex Court did not treat him as a workman within the meaning of Section 2(s) of the ID Act. Mr. Bodke has relied on judgment of this Court in ***Standard Chartered Bank vs. Vandana Joshi*** (supra) in which the employee therein was found to be involved in achieving allocated business targets, ensuring high quality customer service, ensuring external and internal compliance of branch transactions, handling difficult customer situations and contributing to overall achievement of the business growth. In the present case, there is no material to infer that Respondent No.1 had any authority to contribute to any business growth of the establishment. She was mainly performing clerical work as per instructions of her superiors.

19. Considering the above position, I am not inclined to disturb the finding recorded by the Labour Court that Respondent No.1 is a workman within the meaning of Section 2(s) of the ID Act.

20. Once the status of Respondent No.1 as a workman is upheld, the termination would automatically be rendered illegal. Since termination

is effected without conducting enquiry and without following provisions of Section 25F of the ID Act, the same is rendered illegal. The Petitioner-Employer did not even pay retrenchment compensation or notice wages to Respondent No.1. It also appears that the termination is stigmatic in nature. Therefore, termination of Respondent No.1 is rightly held to be illegal by the Labour Court.

21. Coming to the nature of relief that can be granted to Respondent No.1, it is seen that she attained the age of superannuation shortly after passing of the impugned judgment and order dated 7 April 2025 by the Labour Court. She was terminated on 14 May 2021 and has crossed the age of retirement on 30 July 2025. Thus, the intervening period is about four years. The Labour Court has awarded full backwages to Respondent No.1. However, for doing so, no reasons are recorded by the Labour Court. No enquiry is conducted by the Labour Court about any gainful employment by Respondent No.1. Respondent No.1 is terminated from service when she was at the advanced stage of retirement. Her last drawn wages were Rs.35,500/- per month. The total backwages for a period of four years and two months would be in the range of Rs.17,75,000/-. It appears that Respondent No.1 was not keeping good health in the year 2018 wherein she was required to undergo uterus surgery. During December 2020 to March 2021, she was on leave for performance of knee surgery. In the termination letter dated 14 May 2021, the Petitioner accused Respondent No.1 of the work getting affected on account of long leave availed by her. Petitioner apparently appointed another person in place of Respondent No.1. Petitioner was required to terminate

Respondent No.1 services on account of non-availability of any work for her.

22. It appears that even after reporting for duty, Respondent No.1 was unable to perform her job efficiently. This may have resulted on account of long medical treatment availed by her in addition to the advanced age. It would be apposite to reproduce the letter dated 4 May 2021 which reads thus:

महोदया

आपण वसूली विभागात काम करीत असताना आपल्या वैयक्तिक कामानिमित्त अनेकदा दिर्घ मुदतीच्या बऱ्याच रजा आपण घेतल्यात. आपल्या अनुपस्थितीत वसूलीवर फारच गंभीर परिणाम झाला. आर्थिक स्थिती सुधारण्यासाठी त्वरीत नवीन व्यक्तीची आपल्या जागेवर नियुक्ती करण्यात आली. आपल्या गैरहजेरीत आपल्या कामाची जबाबदारी घेतलेल्या व्यक्तीने ती कामे योग्यरित्या पार पाडून विभागही चांगल्या रितीने हाताळला आहे. त्यामुळे यास्थितीत काही बदल केला जाणार नाही.

आपण कामावर हजर झाल्यानंतर आपणांस दिलेली इतर कामे आपल्याकडून मुदतीत पूर्ण झाली नाहीत, तसेच व्यवस्थापनास हवा असलेला रिझल्ट आपणाकडून मिळाला नाही. आपणांस आजपर्यंत कंपनीने सांभाळून घेण्याचा पूर्ण प्रयत्न केला आहे.

आपण अजूनही शारीरिक दृष्ट्या तंदुरुस्त नसल्याने आपल्या कामावर मर्यादा येत आहेत, आणि या स्थितीत कंपनीकडे आपणांस देण्यास कुठल्याही विभागात काम उपलब्ध नाही.

या सर्व बाबींचा आपण योग्य तो विचार करून त्यानुसार आपला निर्णय लेखी कळवावा.

23. There is letter of Respondent No.1 on record submitted by her requesting for 15 days leave on 12 May 2021, in which she has admitted that she was facing problem of blood pressure fluctuations and needed rest. In these circumstances, Respondent No.1 was required to be discharged from service on 14 May 2021.

24. Thus, Respondent No.1 was on a long leave from 4 December 2020 to 31 March 2021. She reported for duty on 1 April 2021 and upon being informed about her incapacity to work by letter dated 4 May 2021, she

again requested for 15 days' paid leave from 12 April 2021. Thus, Respondent No.1 has also contributed in her own termination. The termination is rendered illegal mainly due to technicalities of not following the prescribed procedure. While awarding the compensation it would be necessary to bear in mind the fact that the Petitioner is in the print publication business.

25. Considering the above circumstances, in my view, Respondent No.1 cannot be awarded full backwages. Instead, it would be appropriate to award lumpsum compensation to Respondent No.1 in lieu of reinstatement and backwages. Considering the facts and circumstances of the present case, the lumpsum compensation is fixed at Rs.6,00,000/-.

26. I accordingly proceed to pass the following order:

- i) The Award dated 7 April 2025 passed by the Labour Court, Mumbai in Reference (IDA) No.102 of 2022 is modified by directing that the Petitioner shall pay to Respondent No.1 lumpsum compensation of Rs.6,00,000/- in lieu of reinstatement and backwages within a period of two months.
- ii) Beyond the lumpsum compensation so awarded, Respondent No.1 shall not be entitled to any other service-related benefits from the Petitioner.
- iii) If lumpsum compensation is not paid within the stipulated period, the same shall carry simple interest at the rate of 8% per annum from the date of expiry of period of two months.

27. With the above directions, Writ Petition is **partly allowed and disposed of**. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)