AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.142 OF 2021

Nazir Abdul Razak Shaikh,
Masjid Mohalla, At Post Tarapur,
Taluka Palghar, District Thane ... **Petitioner**

Vs.

Air Liquid India Holdings Pvt. Ltd.,
24/9, Mohan Coop. Industrial Estate,
Mathura Road, New Delhi ... **Respondent**

Mr. Avinash Fatangare with Ms. Archana Shelar for the petitioner.

Mr. Amrut Joshi with Mr. Suyash Gadre for the respondent.

CORAM	**: AMIT BORKAR, J.**
RESERVED ON	**: MARCH 26, 2026.**
PRONOUNCED ON	**: APRIL 2, 2026**

JUDGMENT:

1. The present writ petition is instituted under Articles 226 and 227 of the Constitution of India, whereby the petitioner seeks to challenge the legality and correctness of the Judgment and Award dated 27 November 2019 rendered by the Labour Court at Thane in Reference (IDA) No. 34 of 2009.

2. The facts giving rise to the present petition, stated in brief, are that the petitioner was employed with M/s. Pure Helium India Private Limited in the capacity of a Trailer Driver since the period 1995–1996. It is the case of the petitioner that his services came to be terminated with effect from 4 June 2008 without compliance of the due procedure established by law. At the time of termination, the petitioner was drawing wages of Rs.14,000/- per month. It is further brought on record that the said company subsequently came to be merged and amalgamated pursuant to an order dated 28 May 2013 passed by the Delhi High Court in Company Petition No.160 of 2013. By virtue of such amalgamation, the respondent has stepped into the shoes of M/s. Pure Helium India Private Limited and is liable in respect of its acts and liabilities. The respondent is a company incorporated under the Companies Act, 1956 and is engaged in the business of production of helium gas, which is utilized by entities such as ONGC, BARC and for MRI scanning machines, and is carrying on business at Mumbai. Upon termination of his services, the petitioner raised an industrial dispute seeking reinstatement with effect from 4 June 2008 along with continuity of service and full back wages. The said dispute was taken up in conciliation proceedings. However, on account of lack of cooperation on the part of the Management, the conciliation failed, and the dispute was thereafter referred for adjudication to the Labour Court, Thane, where it was registered as Reference (IDA) No. 34 of 2009.

3. The Labour Court, after recording evidence adduced by both sides and upon hearing them, by its Award dated 11 March 2011, allowed the reference. The Labour Court directed the respondent-Company to reinstate the petitioner in service with continuity and full back wages with effect from 4 June 2008. It further directed that, for the purpose of computation of continuity, the petitioner's service be reckoned from 28 April 2006.

4. Being aggrieved by the said Award, the respondent approached this Court by filing Writ Petition No.58 of 2012. The said petition was ultimately disposed of by consent, whereby the Award dated 11 March 2011 passed by the Labour Court in Reference (IDA) No. 34 of 2009 was quashed and set aside, and the reference was restored to the file of the Labour Court by order dated 5 March 2012. Pursuant thereto, the Labour Court granted liberty to the parties to adduce additional evidence, including evidence in respect of the documents produced by the petitioner along with the list at Exhibit 39 in the original proceedings. The petitioner thereafter filed his statement of claim before the Labour Court. It was his case that he had been in continuous employment of the respondent-Company as a Trailer Driver since 1995–1996. He reiterated that his services were terminated with effect from 4 June 2008 without following due process of law. He asserted that his last drawn wages were Rs.14,000/- per month. It was also stated that the respondent is engaged in the production of helium gas, which is supplied to organizations such as ONGC, BARC and for use in MRI scanning machines. The petitioner further contended that prior to the impugned termination dated 4 June 2008, his services had earlier been terminated with effect from 28 February 2006. According to him, the respondent thereafter

attempted to outsource transportation activities by hiring trailers during March and April 2006, but the arrangement proved to be financially unviable. Consequently, the respondent reinstated the petitioner in service with effect from 1 May 2006 with continuity of service and full back wages for the intervening period of March and April 2006. However, such reinstatement was not reduced into writing. The petitioner also did not insist upon any written document on account of his pressing need for employment. It is further the case of the petitioner that after his reinstatement, the relationship between him and the respondent was strained. The respondent allegedly reduced his salary from Rs.11,500/- to Rs.10,000/- per month, which was subsequently restored to Rs.11,500/- after a period of six months upon negotiations. It is alleged that while other drivers were granted annual increments of Rs.3,000/-, the petitioner was granted only Rs.1,000/-, thereby subjecting him to discriminatory treatment and unfair labour practices. The petitioner claims to have raised objections to such conduct. However, instead of addressing his grievances, the respondent terminated his services with effect from 4 June 2008 on the pretext of financial inability to pay his wages. According to the petitioner, the said termination is illegal and in violation of due process of law. He asserts that he was a permanent workman in continuous service and that the respondent failed to comply with the mandatory requirements of law, including issuance of notice or payment in lieu thereof and payment of retrenchment compensation. The petitioner issued a demand notice dated 13 September 2008 seeking reinstatement with continuity of service and full back wages, but the respondent failed to accede to the same.

5. The respondent-Company filed its written statement opposing the claim. It denied that the petitioner was in employment since 1995–1996 and contended that he was employed only from the year 1999. It was further contended that the petitioner had voluntarily resigned from service with effect from 28 February 2006 and had requested settlement of his dues. The resignation letter dated 28 February 2006 was placed before the Director on 2 March 2006 and was accepted forthwith. According to the respondent, the resignation was tendered voluntarily, and the petitioner received full and final settlement, including gratuity and provident fund amounts. It is, therefore, contended that upon acceptance of resignation, the relationship of employer and employee stood severed with effect from 28 February 2006, and consequently, the reference itself is not maintainable. The respondent further contended that thereafter, on 28 April 2006, the petitioner approached the Company with a request to undertake work as an independent contractor as and when required. It is stated that the petitioner agreed to carry out transportation work in the name and style of Nazir Abdul Razak Shaikh & Co., Transport Contractor. The petitioner allegedly raised bills towards transportation charges for the period from 31 March 2007 to 4 June 2008, which were duly paid by the Company after deduction of applicable taxes. On this basis, it is contended that the petitioner was functioning as an independent transport contractor and not as an employee. The respondent denied all allegations of unfair labour practices, reduction of wages and discriminatory treatment. It also denied that trailers were hired at excessive cost or that any such circumstances led to reinstatement of the petitioner. According to the respondent, the petitioner was permitted to work as a contractor at his own request, and hence, there was no question of termination of service on 4 June 2008. On these grounds, the respondent prayed for dismissal of the reference.

6. Mr. Fatangare, learned Advocate appearing for the petitioner, submits that the petitioner is not conversant with reading or writing in English and, therefore, is incapable of understanding the contents of the bills allegedly issued by him, which are produced at Exhibit 31 and relied upon by the Labour Court to infer that payments were made to him in the capacity of a contractor. It is his submission that the said inference is erroneous. According to him, the bills bearing the signature of the petitioner merely correspond to the amounts payable towards daily wages, and do not establish any independent contractual arrangement as sought to be suggested by the respondent.

7. Learned counsel for the petitioner further invited attention to the insurance policy on record and submitted that the policy, covering the period from the year 2006 till the end of March 2009, contains an annexure listing the employees working with the respondent. In the said annexure, the name of the petitioner is reflected as an employee. It is further submitted that three employees, whose names also appear in the said annexure, have deposed in support of the petitioner and have categorically stated that the petitioner was working as an employee during the period from 2006 to 2009. It is contended that the respondent has failed to furnish any explanation as to how the petitioner's name came to be included in the list of employees annexed to the insurance policy. It is also pointed out that no agreement has been produced by the respondent to substantiate its contention that the petitioner was appointed as an independent contractor for transportation of goods.

8. Per contra, Mr. Joshi, learned Advocate appearing for the respondent, has invited attention to the bills produced at Exhibit 31 and submitted that, at the relevant time, while making payments to the petitioner, tax was deducted at source and Form 16A under the Income Tax Act was issued, which is applicable in the case of payments made to contractors. Referring to the findings recorded in the impugned Award, it is submitted that the Labour Court has noted that the muster rolls at Exhibits 20 and 21 indicate the presence of the petitioner as an employee for the months of January and February 2006. However, the muster rolls collectively produced at Exhibit 29 do not reflect the petitioner's presence after February 2006. It is further submitted that the bills at Exhibit 31, covering the period from 31 March 2007 to 15 March 2008, are issued in the name and style of "Nazir Abdul Razak Shaikh & Co., Transport Contractor" on the letterhead, thereby indicating an independent contractual status. Reliance is also placed on Exhibit 32, being a letter dated 28 April 2006 signed by the petitioner, wherein he requested the respondent to provide him work. On the basis of this material, it is submitted that the Labour Court has rightly concluded that the relationship between the parties was that of an independent contractor and not that of employer and workman within the meaning of Section 2(s) of the Industrial Disputes Act. It is further submitted that it is an undisputed position that the petitioner had resigned on 28 February 2006, and thereafter no employer-employee relationship subsisted. Attention is also invited to Form 16A at Exhibit 33 for the period from 1 April 2007 to 31 March 2008, which demonstrates deduction of tax at source on payments made to the petitioner as a contractor. It is lastly submitted that the petitioner had accepted an amount of Rs.95,562/- on 28 February 2006 towards full and final settlement of his dues, including salary, leave encashment and gratuity, which fact is not in dispute. On these grounds, it is contended that the writ petition deserves to be dismissed.

REASONS AND ANALYSIS:

9. I have carefully considered the rival submissions and the material placed on record. The real question is a short one, though the record is somewhat mixed. The petitioner says that he remained in the service of the respondent as a workman and that the so called contractor arrangement was only a name given to avoid his rights. The respondent, on the other hand, says that the petitioner himself resigned on 28 February 2006, took full and final settlement, and thereafter started working as an independent transport contractor. The answer to the dispute must therefore come from the documents, the oral evidence, and the natural effect of the conduct of the parties.

10. At the outset, the submission of the petitioner that he is not able to read or write English cannot by itself decide the controversy. It may explain why he says that he did not properly understand the bills, but that fact alone does not make every document unreliable. The Court has to see what the documents show in substance. A signature on a bill is not a final answer in every case, but when the bill is supported by the surrounding record, it does carry weight. The petitioner must still show, by convincing material, that despite those bills he continued to be a regular employee and not a contractor.

11. The petitioner has placed strong reliance on the insurance policy and the annexure attached to it, where his name is shown as an employee. A person whose name is included in such a list may normally be understood as working with the establishment. So, it cannot be said that this document has no value. It does carry some indication that the petitioner was treated along with other employees. However, this Court must go a little deeper and see how this document came into existence. It is necessary to ask who prepared this annexure, whether it was prepared by the employer alone or by some insurance authority, and for what purpose the names were included. Sometimes, such lists are prepared only to extend coverage under a policy, and not strictly to define legal rights or status of employment. A person may be shown in such a list for safety or administrative reasons. That does not always mean that he was legally a regular employee in the strict sense. Therefore, while this annexure creates some support for the petitioner, it does not settle the issue finally. It is one piece of material, and it must be weighed along with other evidence.

12. Coming to the oral evidence of the three witnesses, their statements do lend support to the petitioner's version. They have said that the petitioner worked as an employee between 2006 and 2009. Such statements cannot be brushed aside lightly. They reflect what these persons observed or believed during that time. Still, the Court has to be careful. Oral evidence, though important, is sometimes based on impression rather than exact knowledge. The Court must see whether these witnesses had full knowledge of how the petitioner was being paid, whether tax was deducted, what documents were executed, and what arrangement existed between the parties. If they were only co-workers, they may have seen the petitioner working, but may not have known the exact nature of his engagement. That difference is important. A person may appear like an employee in day to day work, but legally he may stand in a different capacity. Therefore, when documentary evidence gives a clearer and more reliable picture, oral statements cannot override it. If the documents consistently point in another direction, then such oral evidence has to be read with caution and cannot alone decide the issue.

13. The petitioner has also argued that the respondent has not produced any written agreement showing that he was appointed as a contractor. Normally, when a person is engaged as a contractor, especially for transport work, one would expect a written contract. However, practical realities cannot be ignored. In many business dealings, particularly in transport and small scale operations, parties often proceed on mutual understanding without formal documentation. Therefore, absence of a written agreement does not automatically mean that no contractor relationship existed. The Court must then look at the actual conduct of the parties. It must see how payments were made, in what form bills were raised, how the income was treated for tax purposes, and what the petitioner himself stated in his own communications. If all these factors show a pattern consistent with a contractor arrangement, then the absence of a formal contract becomes less significant. The real test is not what is missing on paper, but what is reflected through consistent conduct.

14. On the side of the respondent, the resignation letter dated 28 February 2006 assumes great importance. The petitioner has not been able to give any convincing explanation as to why such a letter would be signed if he intended to continue as a regular employee. The respondent has explained that this resignation was duly accepted and followed by full and final settlement. It is also brought on record that the petitioner received a sum of Rs.95,562, which included salary dues, leave encashment, and gratuity. This payment has not been shown to be under protest or compulsion. The petitioner has not denied receiving this amount. This fact weighs heavily. When a person resigns and accepts all his dues, including gratuity, it usually indicates that the employment relationship has come to an end. It is a clear break in service. In such situation, the Court cannot lightly assume that despite resignation and settlement, the same employment continued silently. Such a conclusion would go against normal human conduct and business practice.

15. The next piece of evidence, namely the petitioner's own letter dated 28 April 2006, further clarifies the situation. In that letter, the petitioner has requested the respondent to give him work. The tone and language of this letter are important. It shows that the petitioner was seeking an opportunity to work again. It does not read like a complaint by an existing employee. It reads like a request made after a break in relationship. If he was already in continuous service, there was no need for such a request. This letter therefore supports the respondent's case that after resignation, a new arrangement came into existence. It indicates that whatever engagement followed was not continuation of earlier service, but something different in nature.

16. The bills produced at Exhibit 31 also add to this picture. These bills are issued in the name of "Nazir Abdul Razak Shaikh & Co., Transport Contractor." This description is clear and specific. It reflects a status of contractor. An employee receiving wages does not normally issue bills in the name of a contractor firm. The contents of billing itself suggests an arrangement as a contractor. The petitioner has tried to explain this by saying that he did not understand the contents due to lack of knowledge of English. This explanation may create some doubt about his full awareness, but it does not change the consistency of the documents. These bills were raised over a period of time, and they followed a pattern. It is difficult to accept that such a pattern would continue if the petitioner was only a daily wage employee. The manner in which accounts were maintained speaks for itself.

17. The tax documents further strengthen this conclusion. The Form 16A issued for the relevant period shows that tax was deducted at source from payments made to the petitioner as a contractor. While tax treatment alone cannot decide the legal relationship, it is an important supporting factor. It shows how the respondent understood and treated the payments. It also shows that the financial transactions were shown as contractor payments. This supports the bills and with the petitioner's own request letter. When multiple documents, created at different times for different purposes, all point in the same direction, the Court cannot ignore that consistency.

18. The muster rolls also support the same line of reasoning. The records show the petitioner's presence as an employee only for January and February 2006. After that, his name disappears from the muster rolls. If he had continued as a regular employee till 2008, there should have been consistent entries of his attendance. The absence of such entries indicates that his status was no longer that of a regular employee. The petitioner has not been able to produce any reliable attendance record for the later period. This absence adds to the doubt in his case and supports the version of the respondent.

19. When all these aspects are seen together, a clear picture begins to form. The insurance policy annexure and the oral evidence give some support to the petitioner, but they stand alone and are not strongly backed by consistent records. On the other hand, the resignation letter, the acceptance of full and final settlement, the petitioner's own request for work, the contractor styled bills, the tax deduction records, and the absence of his name in later muster rolls all point in one direction. They show that the original employment came to an end on 28 February 2006 and that thereafter a different arrangement existed. The Court must decide on overall probability and not on isolated pieces of evidence. In this overall view, the petitioner's case does not inspire sufficient confidence. The material on record supports the case of the respondent.

20. The Labour Court, therefore, did not commit any legal error in concluding that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act for the later period. In these circumstances, no interference is called for with the impugned Award. The writ petition, accordingly, deserves to fail.

21. In view of the foregoing discussion and findings, the following order is passed:

(i) The writ petition stands dismissed;

(ii) Rule is discharged;

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

(AMIT BORKAR, J.)