

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. No. 4247 of 2005**

Sanjay Kumar Dubey, S/o V.P. Dubey R/o 27/459 New Shanti Nagar,
P.O. Shanker Nagar, Raipur (C.G.) Present R/o, C/o D.K. Shukla
Pragya Parisar, Vinoba Nagar, Bilaspur (C.G.)

---- Petitioner

Versus

1. Vice President, Centurion Bank Ltd. 207, Centre Point, Dr. Ambedkar Road Parel, Mumbai.
2. Regional Product Heat Centurion Bank Limited 701-702, chetak centre R.N.T. Marg, Indore (M.P.)
3. Branch Manager Centurion Bank Limited 231, Second Floor, Rishabh Complex M.G. Road, Raipur (C.G.)

---- Respondents

For Petitioner:

Mr. Rajiv Bharat, Advocate

For Respondents:

Mr. Govind Dewangan, Advocate under
instruction of Mr. Y.C. Sharma, Advocate**Hon'ble Shri Justice P. Sam Koshy****Order on Board****07.12.2015**

1. The challenge in the present Writ Petition is to the Order dated 10.08.2005 passed by the Appellate Authority, C.G. Shops and Establishment Act, 1958.
2. The case in brief is that the Petitioner was appointed as Junior Officer with Centurion Bank Limited on 01.07.1998. Subsequently, vide order dated 23.08.2002 the Petitioner was promoted to the post of Junior Manager with effect from 01.04.2002. A perusal of Annexure P/4 dated 23.08.2002 would reveal that though the Petitioner was promoted to the post of Junior Manager but the terms and conditions of the appointment remained unchanged. Subsequently, it is alleged that the Petitioner on account of some misconduct

was issued with the show cause notice on 12.12.2003 and to which the Petitioner had also submitted his reply on 17.12.2003. However, without conducting any further inquiry on the reply so submitted by the Petitioner the Respondent vide order dated 25.02.2004 issued order of termination from service. The Petitioner challenged the said order of termination by preferring an appeal before the Appellate Authority, C.G. Shops and Establishment Act, 1958 (Henceforth the Act,1958). The Appellate Authority has vide the impugned order dated 10.08.2005 rejected the appeal of the Petitioner on the ground that the Petitioner does not fall within the definition of an employee under the aforesaid Act. It is this order which is under challenge in the present Writ Petition.

3. Learned Counsel for the Petitioner submits that the Appellate Authority has erred in as much as in not appreciating requirement of the Act. 1958. Further the contents of the impugned order is bad in law to the extent that the Appellate Authorities ought to have first perused the evidence of the Respondent whether it proves that the Petitioner was not an employee but was working in the managerial capacity and therefore the Act, 1958 would not be applicable upon the Petitioner. The Respondents have also not led evidence to show the requirement under Sub - section 2 of Section 6 of the Act, 1958 to establish before the Appellate Authority so far as the Petitioner is an employee or not.

4. The present Writ Petition has been filed in the year 2005 and notices were also immediately issued and on which Respondents have also entered their appearance. However, in spite of more than 10 years have been passed the Respondents have not filed reply to the present Writ Petition and therefore this Court is compelled to proceed further and decide the case without reply of the Respondents on record.

5. A perusal of the impugned order would reveal that it was the Respondent who had raised objection so far as the Petitioner is not being an employee under the Act, 1958. Since, it was the contentions raised by the Respondents therefore the burden of proof fell upon the Respondents to prove and establish as to why the Petitioner would not fall within the ambit of employee as defined under the Act, 1958. For ready reference, the definition of 'employee' under the Chhattisgarh Shops and Establishments Act is reproduced as under:-

“Employee means a person wholly or principally employed, whether directly or through any agency, and whether for wages or other consideration, in or in connection with any establishment, and include an apprentice, but does not include a member of the employer's family.”

6. Further, it was also the responsibility of the Respondent to show how the Act would not be applicable upon the Petitioner in accordance with the provisions of Section 3 of the Act of 1958 which clearly stipulates in Section 3(a) which reads as under :-

“3. Act not applicable to certain persons and establishments- (1) Nothing in this Act shall apply to -

[(a) Persons occupying positions of management and declared as such under clause (a) of sub-section (2) of Section 6 or employed in a confidential capacity not exceeding ten per cent of the total number of the employees in the establishment or three in number whichever is less.]

.....

The Respondents have not been able to establish before the Authorities concerned about fulfillment of the statutory requirement as is required under Section 6(2)(a) of the Act, 1958.

7. Only the deposition that the Petitioner at the time of the termination was holding a post of junior manager would not lead to any definite

conclusion that he was also having powers of the management like grant of leave and taking disciplinary action against staff of the branch where the Petitioner was posted. In absence of any evidence led on behalf of the Respondent in this regard the findings arrived at by the Appellate Authority does not seem to be proper, legal and justified. The Authority concerned ought to have taken specific reason to reach the conclusion that the Petitioner did not fall within the definition of the employee except relying upon the earlier submission made by the management before the Authorities.

8. The constitutional Bench of the Supreme Court in the case of H. R. Adyanthaya and Others Vs. Sandoz (India) Ltd. and Others reported in (1994) 5 SCC 737 has held that in deciding the status of an employee, his designation alone is not decisive and what really should be considered is the nature of his duties and the power conferred upon him as well as the functions that are assigned to him. The said view was based on the land mark decision of the Supreme Court in the case of Bangalore Water Supply & Sewerage Board Vs. A. Rajappa and Others and the other connected matters reported in (1978) 2 SCC 213. It is undisputed that these Labour Laws, Industrial Dispute Act or for that matter the Shops and Establishments Act are all liberal legislations made for protection of the employees/workmen. Therefore, hyper-technical grounds for refusing to entertain the dispute and refusing to adjudicate an appeal would not be proper, legal and justified and it would also be defeating the object of the enactment of these laws. On the basis of the above referred two land mark decisions, the Supreme Court in (2001) 7 SCC 394 (Hussan Mithu Mhasvadkar Vs. Bombay Iron & Steel Labour Board and another) in paragraph 10 held as under:-

“No doubt, in deciding about the status of an employee, his designation alone cannot be said to be decisive and what really should go into consideration is the nature of his duties and the

powers conferred upon as well as the functions assigned to him.....It is the predominant nature of the services that will be the true and proper test.”

Again a similar view also has been taken by the Supreme Court in the case of Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh reported in (2005) 3 SCC 232.

9. From the reading of the impugned order it is clear that the employer has not been able to produce sufficient evidence on the issue as to whether an employee answers the description of workman/employee or not and which could have been determined only on the basis of a conclusive evidence. The said question thus would require full consideration of all aspect in the matter.

10. For the aforesaid reasons the present Writ Petition is allowed to the extent that the findings of the Authority concerned upholding the Petitioner as not an employee is set aside and matter is remitted back to Authorities concerned to proceed further giving another opportunity of hearing to either parties to substantiate their contentions so far as preliminary objections of the Respondents about the applicability of the Act, 1958 is concerned and decide the case on merits in case the need so arises. It is expected that the Authorities concerned shall expeditiously dispose off the Appeal.

11. With the aforesaid observations the Writ Petition stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE