

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 937 OF 2014

1. The State of Maharashtra,
Through Commissioner,
Dairy Development Department,
Maharashtra State, Administrative
Wing, Abdul Gaffar Khan Road,
Warali, Mumbai 400 018.

2. The Manager,
Government Milk Scheme,
MIDC, Nagapur, Ahmednagar.

..Petitioners

Versus

Rajendra Madukar Raut,
Age Major, Occ. Service
R/o Vaishnavi Apartment,
Behind Chintamani Hospital,
Savedi, Balikashram,
Ahmednagar.

..Respondent

...
AGP for Petitioners : Smt. Shinde V.A.
Advocate for Respondent : Shri Barde Parag Vijay
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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 19, 2015
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ORAL JUDGMENT :-

1. Heard.

2. Rule.

3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioners are aggrieved by the judgment and order dated 4.2.2013, delivered by the Industrial Court in Complaint (ULP) No.46 of 2009. By the impugned judgment, the Complaint has been allowed and the order of punishment issued by the petitioners dated 12.12.2008 is quashed and set aside.

5. I have heard the learned Advocates for the respective sides for quite sometime.

6. In the light of the order that I would be passing, I do not find it necessary to advert to their submissions in their entirety.

7. The respondent preferred Complaint (ULP) No.46 of 2009, challenging the order of punishment, dated 12.12.2008 by which the punishment of stoppage of two increments, permanently, had been imposed upon him.

8. The petitioners filed their Written Statement on 19.11.2010. In paragraph No.14 of the Written Statement, the petitioners have specifically contended that the respondent is not a workman, is a supervisor and therefore, this case would not be maintained before the Industrial Court. It was averred that the case will have to be filed before the Maharashtra Administrative Tribunal. The issue as to whether the respondent is a workman or not, was not framed by the

Industrial Court. As a consequence, the Industrial court has proceeded on the premises that the respondent is a workman and the case would lie before the Industrial Court.

9. This Court in the matter of Permanent Magnets Vs. Vinod Vishnu Wani and others [2002 (93) FLR 32], has held in paragraph No.12 that the Court is under an obligation to frame appropriate issues considering the rival pleadings of the parties. It would be apposite to refer to the observations of this Court in paragraph No.12, which are as under:-

“12. *The contention sought to be raised by the respondent in this regard is that the prayer to frame issue is restricted to the validity and legality of the Domestic Enquiry and, therefore, right reserved by the petitioner to lead evidence was only in case the enquiry is held to be not in accordance with the principles of natural justice. It cannot be disputed that strict interpretation of the pleadings would disclose a prayer to frame issue in relation to validity and legality of the Domestic Enquiry. The pleadings do not disclose a specific prayer for framing of any other issue. However, it is always to be remembered that framing of issue is primarily the function of the Court and it is not for the party to make prayer in that regard. The issues are to be framed based on the pleadings of the parties. Merely, because the party does not pray for framing of an issue, the Court is not absolved of its duty of framing the issues, which otherwise arise from the pleadings of the parties. This does not mean that the parties are forbidden from rendering necessary assistance to the Court in framing of*

issues. However, it is primarily the duty of the Court to frame issues, based on the pleadings. Viewed from this angle, mere absence of the prayer to frame issue cannot result in any prejudice to the petitioner. The Apex Court in Makhan Lal Bangal v. Manas Bhunia and others reported in 2001 AIR SCW 90, has ruled that an obligation is cast on the Court to read the plaint/ petition and written statement/ counter, if any, and then determine with the assistance of the learned counsel for the parties the material propositions of fact or of law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the Court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the Court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues.”

10. I do not find from the impugned judgment, inasmuch as, the respondent is unable to point out that the issue as to whether he is a “workman” or not, and whether being a supervisor would render the complaint untenable or not, has been dealt with by the Industrial Court.

11. The learned Division Bench of this Court in the matter of Chandrashekhar Chintaman Vaidya Vs. National Organic Chemical Industries Ltd. [2010 II CLR 121 = 2010(3) Mh.LJ 434], has led down the tests, which have to be applied in such circumstances, while deciding the status of a complaint. The conclusions of the learned Division Bench

read thus:-

“36. The law as to basic test as to facts to be proved for holding a person to be a workman under Section 2(s) of the Industrial Disputes Act can be said to be settled, and can be summarized as follows:

[a] The person does menial, ministerial or clerical work.

[b] If any of the parts of his duties involves any sort of supervision, which is on the material and not on the men.

[c] The predominant nature of duties discharged by the person, i.e., the part of supervisory duties, if any, is not predominant.

[d] What is seen to be is not the designation and/or nomenclature, but performance of duties.”

12. I find that the Industrial Court has overlooked the said aspect and has delivered the impugned judgment dated 4.2.2013, presuming that it has jurisdiction and the complaint is maintainable.

13. In the light of the above, this petition is partly allowed. The impugned judgment dated 4.2.2013, delivered by the Industrial Court is quashed and set aside. Complaint (ULP) No. 46 of 2009 is remitted to the Industrial Court for framing of proper issues and for enabling the

litigating sides to lead additional evidence. The oral and documentary evidence on record shall not be discarded.

14. Both the litigating sides agree to appear before the Industrial Court at Ahmednagar on 11.9.2015. Since the complaint was instituted in the year 2009, the Industrial Court shall decide the same expeditiously and preferably on/or before the 15th day of September, 2016.

15. Rule is made partly absolute in the above terms. No order as to costs.

(RAVINDRA V. GHUGE, J.)

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