

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7012 OF 2013

Vasant Manaji Kamble,
Age 56 years, Occ. Nil,
R/o Punnammoti Nagar,
Ahmednagar.

..Petitioner

Versus

1. The Chairman, Bhaskar
Pandurang Hiwale Education
Society, Vishwast Sanstha,
Ahmednagar.

2. The Director,
The Center for Rural Development
Institute of Social Work and Research
Station Road, Ahmednagar

3. The Special District Welfare
Officer, Office of Social Welfare,
Datarange Mala,
Ahmednagar.

..Respondents

...
Advocate for Petitioner : Shri Natu Sharad V.
Advocate for Respondents 1 & 2 : Shri Garud N.C.
AGP for Respondent 3 : Smt. Shinde V.A.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: July 13, 2015
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ORAL JUDGMENT :-

1. I have heard the learned Advocates for the respective sides at length.
2. Rule.
3. By consent, Rule is made returnable forthwith and the petition is taken up for final disposal.

4. The petitioner is originally Complainant No.2 in Complaint (ULP) No. 23 of 2009 filed by the Complainants along with Shri Shashikant Anand Hiwale, who was the Registrar of the respondent - Education Society. Shri Natu, therefore, makes it clear that this petition is restricted only to the extent of Complainant No.2 in the said Complaint before the Industrial Court.

5. The petitioner is aggrieved by the judgment and order dated 17.12.2012, delivered by the Industrial Court in Complaint (ULP) No. 23 of 2009.

6. Shri Natu submits that the Industrial Court has come to a conclusion in paragraph Nos. 7 and 18 of the impugned judgment that the entire complaint was not maintainable since both the Complainants did not fall within the definition of “workman” under Section 2(s) of the Industrial Disputes Act, 1947. He, therefore, submits that once the Industrial Court came to a conclusion that the Complaint was not tenable, it lost jurisdiction and could not have exercised jurisdiction by going into the contentions and averments put forth by both the sides. Once the Industrial Court felt that it could not deal with the Complaint it should have refrained from doing so. He, therefore, submits that all conclusions arrived at pursuant to the conclusion that the Industrial Court had no jurisdiction, would render the said conclusions a nullity.

7. He further submits that besides the contentions put forth by the respondents that the petitioner is not a “workman”, there has been no evidence on record, which would have convinced the Industrial Court that the petitioner is not a “workman”. His case is as regards a claim towards unpaid suspension allowance, as per the V Pay Commission. He has been rendered remediless by the order passed by the Industrial Court.

8. Shri Garud, learned Advocate for respondents 1 and 2 has opposed this petition. Submission is that the petitioner has been subjected to disciplinary proceedings and he has suffered dismissal from service on account of proved mis-conducts by order of punishment dated 17.10.2005. His Appeal No. 186 of 2005, preferred before the University and College Tribunal has been dismissed by judgment dated 5.9.2006. Since his removal from service has attained finality, this petition need not be considered.

9. He further submits that the management has approached the Civil Court for seeking recovery of amount / mis-appropriated amount by the petitioner. The suit has been decreed and execution proceedings have been initiated against the petitioner through Special Darkhast Nos.40 and 41 of 2006 in relation to the decree passed in Special Civil Suit No. 92 and 93 of 1999.

10. Shri Garud further submits that though the Industrial Court has concluded that the petitioner is not a “workman”, it has made every effort to do justice to the petitioner by considering his entire contentions and

grievances. On the basis of the evidence adduced, the Industrial Court has adjudicated upon the entire complaint filed by the petitioner and even on merits, the Industrial Court has concluded that the Complaint is without any merits.

11. He, therefore, submits that no purpose would be served by remitting the complaint to the Industrial Court for leading evidence on the issue of “workman”. He further adds that the conclusion drawn by the Industrial Court in paragraph Nos.7 and 18 of the impugned judgment settles the issue that the petitioner is not a “workman”. He, therefore, prays for the dismissal of the petition.

12. I have considered the submissions of the learned Advocates.

13. It is not disputed that the paragraph Nos.7 and 18 are the conclusions drawn by the Industrial Court on the aspect as to whether the petitioner is a “workman” or not. The paragraph preceding paragraph No.7 is in relation to the claim of the petitioner, pleadings put forth and the contentions of the respondent.

14. It cannot be disputed that the source of jurisdiction of the Labour or Industrial Court flows from the complainant being a “workman” under Section 2(s) of the Industrial Disputes Act, 1947 and an “employee” under Section 3(5) of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“the said Act”) and the

respondent being an “industry” under Section 2(j) of the Industrial Disputes Act, 1947.

15. Paragraphs 7 and 18 of the impugned judgment read as under:-

“7. The complainant No.1 was working as a Registrar and complainant No.2 was working as a Accountant. The Registrar is having an ultimate control over the staff working with the respondents. The Accountant is also having ultimate control over the financial matters and staff working under him. Both the complainants were engaged in the administrative / supervisory category and therefore they are not workmen within the meaning of Section 2(s) of Industrial Disputes Act, 1947 and the complaint filed by them is not legal and maintainable.

“18. The complainant no.2 during the course of his cross examination made a statement that his designation was Accountant and he was working with the respondent No.2. There was no any other person working as Accountant. One Clerk was provided to him to get the work of typing from him. Considering the aforesaid deposition of both the complainants, I am of the opinion that the complainants falls in the administrative and supervisory category by virtue of their nature of duties apart from designation and salary drawn by the complainants. On the face of it, the complainants do not appears to be Workman and consequently an Employee as per the definition under INDUSTRIAL DISPUTES ACT, 1947 AND MRTU AND PULP ACT, 1971. In fact on this sole ground, the complaint filed by the complainants is not maintainable and this Court also do not get jurisdiction to try, entertain and decide the same. In the circumstances, on the face of it, the issue deserves to be and required to be answered in the negative. Hence, I answer the Issue No.1 in the negative.”

16. It is evident that the focus of the respondent was on complainant No.1 in the said complaint who was the Registrar of the educational institution. The petitioner is complainant No.2 who was working as an Accountant. Considering the contentions of the respondent and in the absence of any evidence, the Industrial Court has concluded that there was no other person working as “Accountant” and there was one Clerk who was typing the work of the department and hence, the petitioner / accountant is not a “workman”. On the basis of skeletal evidence before it, the Industrial Court has casually arrived at the conclusion that the petitioner herein is not a “workman”, thereby, virtually rendering him remediless.

17. 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 considered the issue of a “workman” and has laid down certain conditions, which amount to tests of considering the status of an employee. It would be apposite to reproduce the said tests, which are as under:-

“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.”

18. Ex-facie, I do not find from the case in hand that the Industrial Court has tested the case to find out whether it satisfies any of the tests as laid down by the learned Division Bench of this Court in the National Organic's judgment (supra).

19. In the light of the above, I am of the view that the complaint to the extent of the petitioner deserves to be remitted to the Industrial Court for recording of proper evidence. It is stated that the first complainant who was the Registrar of the Society, has not challenged the impugned judgment. As such, this complaint needs to be remitted only to the extent of petitioner herein.

20. Shri Natu has raised a peculiar issue. His grievance is that once the Industrial Court concluded that the petitioner is not a “workman” and it has no jurisdiction to be exercised over such a complaint, it should have restrained itself from going into the merits of the case. The issue, therefore, is whether the conclusions drawn by the Labour Court would

operate as an obstacle to the petitioner from taking up his entire complaint. Shri Garud has contended that once the Industrial Court has arrived at a finding that the complaint has no merit, there can be no direction to the Industrial Court to decide the complaint afresh. I am unable to accept the contention of Shri Garud for the reasons that once the Industrial Court has concluded that the petitioner is not a “workman” and it had no jurisdiction, it should have refrained from exercising jurisdiction over the same matter.

22. In these circumstances, such conclusions drawn should not be permitted to operate as a hurdle for directing the Industrial Court to decide the complaint afresh.

21. In the light of the above, the impugned judgment and order dated 17.12.2012, delivered by the Industrial Court in Complaint (ULP) No. 23 of 2009 stands quashed and set aside. The said Complaint is remitted to the Industrial Court for deciding all the issues afresh only in relation to the petitioner. Both the litigating sides i.e. the petitioner herein and the respondents, are at liberty to lead evidence in addition to the oral and documentary evidence already placed on record.

23. Needless to state, the Industrial Court shall decide the issue of “workman” and thereafter shall decide the rest of the issues if it concludes that the petitioner is a “workman” and the complaint is tenable.

24. The litigating sides have assured cooperation to enable the Industrial Court to decide the complaint and shall refrain from seeking adjournments on trifle or unreasonable grounds. The Industrial Court shall endeavour to decide the complaint afresh, as expeditiously as possible and preferably on/or before 31.7.2016. Both the litigating sides pray for a particular date to appear before the Industrial Court. As such, both the sides shall appear on 7.8.2015 before the Industrial Court at Ahmednagar. Separate notice by the Industrial Court is not necessary to be issued therefor.

25. Rule is accordingly, made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)

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