

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION NO.20 OF 2015
IN
REVIEW APPLICATION NO.158 OF 2013
IN
WRIT PETITION NO.3103 OF 2013
WITH
CIVIL APPLICATION NO.10598 OF 2015

VIJAY GANPATRAO ROHAMARE

APPLICANT

VERSUS

THE STATE OF MAHARASHTRA
AND OTHERS

RESPONDENTS

Mr.S.S.Choudhary, Advocate for the applicant.

Mr.M.M.Nerlikar, AGP for respondent No.1.

Mr.N.R.Bhavar, Advocate for respondent Nos. 3 and 5.

Mr.H.D.Deshmukh, Advocate for respondent Nos.4, 6 and 7.

Respondent No.2 served.

(CORAM : S.V.GANGAPURWALA AND
RAVINDRA V. GHUGE, J.J.)

DATE : 09/12/2015

ORAL ORDER : (Per Ravindra V.Ghuge, J.)

1. We have heard the learned Advocates for the respective sides at length.

2. The applicant seeks a review of the order dated 12/09/2013 delivered in Writ Petition No.3103/2013 by which this Court had observed as under :-

*“1. Perused the impugned orders. An officiating arrangement has been made. In any case dispute is about supersession.
 2. Alternate and equally efficacious remedy of approaching the Industrial Court under the provisions of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 is available to the petitioners.
 3. Hence, with liberty to avail that remedy, present petitions stand disposed of with no order as to costs.”*

3. The applicant had filed Review Application No.158/2013 prior to the present application. By order dated 05/12/2014, the said application was disposed of with the following observations :-

*“2. Orders passed by this Court, on 21st October 2013, are still not complied with.
 3. The applicant is seeking time to find out, whether it is Bombay industrial Relations Act, 1946, or Industrial Disputes Act, 1947, that regulates the affairs of his employer, namely, Shri Saibaba Sansthan Trust, Shirdi.
 4. The Review Application is pending since last more than one year.
 5. The learned Assistant Government Pleader has appeared for respondent No.1.
 6. In this situation, with liberty to the applicant, to file appropriate application for review, giving necessary details, we dispose of the present Review Application. No costs.”*

4. It is in the above backdrop and in the light of the liberty

granted that the applicant has preferred this review application.

5. Contention of the applicant is that he does not fall in the definition of a “Workman” u/s 2(s) of The Industrial Disputes Act, 1947 and in the definition of an “employee” u/s 3(5) of the MRTU and PULP Act, 1971. The order dtd.12/09/2013 therefore suffers from errors apparent on the face of the order.

6. Mr.Choudhary, learned Advocate for the applicant has drawn our attention to the nature of duties performed by the applicant as a “Deputy Engineer” (Electrical), which are set out in paragraph No.6 of the application.

7. We have considered the nature of duties as have been set out by the applicant in paragraph No.6 of the application. We do not find that any of these duties performed by the applicant would bring him within the ambit of Section 2(s)(iv) of The Industrial Disputes Act, 1947 so as to mean that he is employed in a managerial capacity. We also do not find that by the reason of the powers vested in him or by the nature of duties attached to his office, he functions mainly in a managerial capacity. We are of the view that the nature of duties performed by the applicant are purely clerical in nature.

8. Mr.Choudhary relies upon the basic pay as set out in the definition of a “Workman” u/s 2(s) to support his contention that his salary is more than what is prescribed and hence he would not be a workman within the said definition. The Division Bench judgment of this Court in the matter of Chandrashekhar Chintaman Vaidya Vs. National Organic Chemical, [2010 (2) CLR 121] have put this issue to rest. It is trite law that the amount of wages earned by an employee or his designation is not material while deciding his status as to whether he is a workman or not.

9. We do not find from the application that the applicant has made out any error apparent on the face of the order under review.

10. This application, being devoid of merit, is therefore, rejected.

11. Pending civil application, does not survive and hence is disposed of.

(RAVINDRA V. GHUGE, J.)

(S.V.GANGAPURWALA, J.)