

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1116 OF 2015

Mr. Gunwant Shravanji Wadibhasme
Age 46 years, residing at
B/106, Arogya Sadan CHS Ltd.
Juwekar Marg, Bhandup (East),
Mumbai-400 042.

.. Petitioner.

V/s

M/s UV Advertising & Retails Pvt Ltd.
1/B, 1st Floor, Amber Prasad,
Near MET College, General A.K. Vidya Marg,
Bandra Reclamation, Bandra (West),
Mumbai-400 050
Through its Director
Mr. Pallavkumar Ojha

.. Respondent.

Mr. P.M. Mokashi, for Petitioner.

Coram : Smt. R.P. SondurBaldota, J.

Date : 06th May, 2015

P.C.

1 The petitioner challenges the order dated 06th September, 2014 by which the Labour Court dismissed the application of the petitioner filed under Section 33(C)(2) of the Industrial Disputes Act. The petitioner alleged in his application

that he is illegally terminated from service by the respondent without notice and without complying with the Section 25F of the Industrial Disputes Act. It is case of the petitioner that he was working as “Consulting Creative Director” with the respondent from 01.05.2003 on consulting charges of Rs.83,333/- per month. The Labour Court dismissed the application of the petitioner on the ground that he has failed to establish that he is workman as defined under Section 2(s) of the Industrial Disputes Act.

2 Mr. Mokashi, the learned advocate for the petitioner submits that since there was no contest to the application of the petitioner, the Labour Court could not have dismissed the application by holding that the petitioner has failed to establish that he is workman as defined under Section 2(s) of the Industrial Disputes Act. According to Mr. Mokashi, the Court could not have gone into the position of the petitioner as Consulting Creative Director. He argues that work done by the petitioner was of skilled and technical work.

3 Para 3 of affidavit of examination-in-chief of the petitioner describes the nature of work done by the petitioner. The same reads as follows :-

“That, the nature of work which the Applicant performed is skilled, technical and the operational as much as the applicant had to come out with the creative and innovative advertising ideas as per the clients brief in various media like ATL, BTL, Retail, Digital & Film Productions and also play the role to review the Jr. Creative team idea to maintain quality and creativity. That, while working as a team, the applicant had to give job priority and the work of distribution within the team. The Applicant, in fact is Artist. However, after having gain experience and knowledge in the field of Advertising the Applicant is considered to be in the position of Creative Director (Art.)”

These statements in affidavit of examination-in-chief are sufficient to take the petitioner out of definition of workman under Section 2(s) of the Industrial Disputes Act. The petitioner had admittedly been receiving Rs.83,333/- per month as consulting charges. The documents produced by him show that the amount he is charging is not salary but the consulting charges. In the circumstance, there is no infirmity in the impugned order. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)