

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.252 OF 2015

1. Shri Dilip Gajanan Patekar
2. Shri Jokhanprasad Jaipaul Prajapati
3. Shri Bajirao N. Walanju
4. Shri Nanduram M. Dhobi
5. Shri Chandrabhishan R. Yadav
6. Shri Jaisingh T. Bansode
7. Shri Ramchandra Singh Yadav

Address for all Petitioners :

C/o. Dilip Gajanan Patekar
C/803, RNA Regency Park CHS Ltd
M.G. Road, Next to Dahanukar Wadi
Maharashtra Nagar, Kandivli (West)
Mumbai-400 067.

.. Petitioners.

V/s

1. Glass and Ceramic Decorators
2. Naresh Chand, Director
Glass and Ceramic Decorators

Address of both the Respondents :

A/68, MIDC Maroli Indl. Area
Andheri (East), Mumbai-400 093

.. Respondents.

Mr. R.D. Bhat, for petitioners.

Mr. Kiran Bapat a/w Mr. Prakash Shinde i/b MDP & Partners, for
respondents No.1 and 2.

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

Date : 30th March, 2015

P.C.

1 This petition is directed against the concurrent findings of the Courts below i.e. the Labour Court and the Industrial Court at Mumbai, on the question, whether the seven petitioners are workers within a definition of Section 2(s) of the Industrial Dispute Act. The Courts on appreciation of the evidence before it have held that all the seven petitioners are in the cadre of Supervisor and hence not entitled to resort to the provisions of the Industrial Dispute Act.

2 Petitioners No.1 to 3 were working as Supervisors, petitioners No.4 and 5 were working as Quality Controller, petition No. 6 was working as Screen Supervisor and petition No.7 was working as Production and Maintenance Supervisor. They had joined the services of the respondent-employer as workers and been promoted to the respective posts. On being placed in the higher cadre, they started receiving the salary of the higher grade. Their names were shifted from the category of workers to muster for management staff as staff members. They were no longer bound by the settlements arrived at the Labour Court. The petitioners held

their respective posts for seven long years. At no point of time in the seven years, they had raised any dispute as regards nature of work and denial of benefits of settlement arrived at with the Union which benefits were made available to the workmen as defined under Section 2(s) of the Industrial Dispute Act. In their complaint, the petitioners have, however, claimed that that though their designations were as Supervisor/Quality Controller, they were infact doing the work of both, the workmen and as well as Supervisor/Quality controller. An attempt was made on behalf of the petitioners to establish that they had no supervisory work or they had no control over the persons working with them, so as to treat them as workmen.

3 The Courts below have considered in detail the entire evidence of both the sides. The evidence show that the work carried out by the petitioners was not similar to the work carried out by the workmen which post they had held at earlier point of time. On their promotion they were removed from the class of workmen and were treated either staff members or belonging to the supervisory category. The facility of promotion and every benefit went with the promotion were enjoyed by the petitioners throughout without even so much as

a murmur. In the circumstance, they cannot be allowed to turn around to claim that they are workmen as defined under Section 2(s) of Industrial Disputes Act. Mr. Bhat, the learned advocate for the petitioners relied upon the following decisions of Apex Court and this Court in support of his submission that the designation of the petitioners is not determinative of their position as workmen and that the court must look into the nature of the actual work done by them.

- 1. Aloysius Nunes Vs. Thomas Cook India Ltd, 2000-II-LLJ Bombay Pg.1246.**
- 2. R.A. Gonsalves, since deceased through heirs and ors. Vs. Hotel Corporation of India, Ltd and anr, 2004(4) L.L.N.502.**
- 3. National Engineering Industries Vs. Shri Kishan Bhageria & ors, 1988 I CLR 290 SC.**
- 4. S.K. Maini Vs. Carona Sahu Co. Ltd and Ors, 1994 II CLR 359.**
- 5. Anand Regional Co-operative Oil Seedsgrowers' Union Ltd Vs. Shaileshkumar Harshadbhai Shah 2006(4) L.L.N.157.**

It is submitted that the Court is required to take into consideration several aspects of the employment of a person to determine whether person is a workman and an inference has to be drawn only thereafter.

4 Undisputedly, the work done by the petitioners earlier is no longer done by them. They had been promoted to the present posts long back. The promotion has been accepted by them. For that purpose, they have given up the benefits available to them in service as workmen for as long as seven years. Therefore, I find on infirmity in the concurrent findings of the Courts below. There is no perversity about inference drawn. Hence, petition is dismissed.

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