

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 8300 OF 2016

**RAJIV HOTEL PRIVATE LIMITED MUMBAI THROUGH ITS MANAGING
DIRECTOR MAHESH RELAN AND ANOTHER.**

VERSUS

SHANKAR BHIMAJI MEHTA

...

Advocate for Petitioners : Shri Kulkarni Mukul S.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 04th October, 2016

Per Court:

1 The Petitioner/ Establishment is aggrieved by the order dated 01.09.2015 passed by the Labour Court below application Exhibit C/10 in Complaint (ULP) No.17/2012 by which the two issues cast by the Labour Court were not to be tried as preliminary issues. The Petitioner is also aggrieved by the judgment of the Industrial Court dated 16.02.2016 by which Revision (ULP) No.13/2015 filed by the Petitioner has been dismissed.

2 Shri Kulkarni, learned Advocate for the Petitioner, has strenuously criticized the impugned orders. He specifically points out from Complaint (ULP) No.17/2012 filed by the Respondent/ Employee that the

Respondent himself has averred that no appointment order was issued to him, he was engaged as a Marketing Manager and his duties were of promoting the business of the hotel. With these averments it would indicate that the Respondent is not a workman/employee under Section 2(s) of the Industrial Disputes Act, 1947 r/w Section 3(5) of the MRTU & PULP Act, 1971 and as such, the ULP complaint was untenable before the Labour Court.

3 He further submits that keeping the above aspect in view, the application Exhibit C/10 was filed by the Petitioner praying to the Labour Court to decide the issue Nos.1 and 2 as preliminary issues. By the impugned order, the Labour Court has rejected the application Exhibit C/10 and the Industrial Court has dismissed the revision petition.

4 Shri Kulkarni, therefore, submits that if it could be established that the Respondent is not a workman, the precious time of the Court would be saved. Rather than dealing with all the issues together, the Labour Court could restrict the case to the first two issues and if it concludes that the Respondent is not a workman, the complaint would be rendered untenable and further exercise of entertaining the complaint on its merits and consuming the time of the Court would be saved.

5 Having considered the submissions of Shri Kulkarni, it needs mention that the issue as to whether, an employee is a workman or not is a mixed question of facts and law. The learned Division Bench of this Court in the matter of *Chandrashekhar Chintaman Vaidya v/s National Organic Chemical*, **2010 (II) CLR 121**, has laid down the law that the salary structuring and designation is not as significant as are the nature of duties/ job profile of the employee while considering whether, he is workman or not. Similarly, this Court in the matter of *Uday Janardhan Kulkarni vs. Geo-Chem Laboratories Private Limited*, **2008 (III) CLR 329**, has concluded as under:-

- "6. *It is true that the rule that the Labour Court/ Industrial Tribunal should hear all issues together is not immutable. However, the rule has been adopted as a matter of prudence in order to obviate dilatory tactics which may be adopted by the parties. Procrastination would not benefit either party and certainly not the workman. It must be borne in mind that the Industrial Disputes Act is a beneficial piece of legislation enacted to resolve disputes between employees and their workmen expeditiously. Procedure which is contrary to this avowed object should be eschewed as far as possible. The Apex Court in D.P.Maheshwari's case has in 1983 observed that labour disputes must be resolved with alacrity in order to promote industrial peace. A decision on all issues together from the Labour Court/Industrial Tribunal is a step in that direction.*
7. *The next submission of the learned advocate for the respondent Company that the evidence would be led on all issues and only one issue should be decided, is unsustainable in view of the fact that it is necessary to expedite labour matters as observed in the case of*

R.B.Gundewar v/s Crompton Greaves Ltd. (supra). The finding recorded by the Labour Court as to whether a person is a workman or not, is not final. The superior Court, if it finds that the finding recorded is incorrect, would have to remand the matter to the Labour Court at a later stage, whereas if all the issues are decided together, the possibility of a remand could be obviated if the superior Court finds that the conclusion of the Labour Court that the person is not a workman is erroneous.

8. *In my view, therefore, the petitioner is justified in his submission that all issues, including the issue whether he is a workman, must be decided together. The order of the Labour Court is set aside. The Labour Court is directed to frame all the issues together and decide the reference by permitting parties to lead evidence on all issues. The Labour Court shall answer all issues together."*

6 It cannot be ignored that by order dated 20.08.2016 passed by this Court in Writ Petition No.3130/2015 filed by the Petitioner against the same Respondent, this Court has directed the Petitioner to produce certain documents in the pending complaint. It also cannot be ignored that the issues have been cast and the pleadings are complete. Keeping in view the ratio laid down in the *Chandrashekhar Chintaman Vaidya v/s National Organic Chemical* (supra), the recording of evidence for deciding the status of the Respondent would be necessary. While doing so, the issue as to whether, there was an alleged termination and whether, such purported termination would amount to illegal retrenchment, could be conveniently gone into by the Labour Court.

7 In the light of the above, this Writ Petition is disposed of without causing any interference in the impugned orders. Nevertheless, considering that the complaint was instituted in 2012, the Labour Court is directed to decide the said complaint as expeditiously as possible and preferably on or before the end of October, 2017.

kps

(RAVINDRA V. GHUGE, J.)