

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

WRIT PETITION NO. 7257 OF 2016

**PRALHAD YADAV PATIL
VERSUS
THE REGIONAL EXECUTIVE DIRECTOR II, MSEDCL PUNE THE
MANAGER MUMBAI.**

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**Advocate for Petitioner : Shri Pawar Vikarm Anandrao and Shri P B
Salunke.**

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th July, 2016

Per Court:

1 The Petitioner is aggrieved by the judgment of the Industrial Court dated 31.03.2016 by which his Complaint (ULP) No.13/2014 has been dismissed only on the ground that he is not a workman under Section 2(s) of the Industrial Disputes Act, 1947.

2 Shri Pawar, learned Advocate for the Petitioner, has strenuously criticized the impugned judgment. The contention is that though the Service Rules and the circulars were produced at Exhibits C-15 and C-18, the Industrial Court has not properly dealt with the said documents. Merely on the basis of reading the said documents, the Industrial Court has come to the conclusion that the Petitioner is not

workman. He vehemently submits that the Industrial Court ought to have considered whether, the Petitioner has performed any of the duties under Exhibits C-15 and C-18 and only if he has performed the said duties, it can be said that he is not a workman.

3 He further makes a grievance that though the Industrial Court has concluded that unfair labour practice is made out, the relief has been denied to the Petitioner only on the ground that the complaint is untenable.

4 He further submits that the matter can be remanded back to the Industrial Court for adducing fresh or additional evidence.

5 I have considered the submissions of Shri Pawar and I have gone through the petition paper book with his assistance.

6 It is trite law that neither the designation nor the salary structuring would decide the status of an employee as regards whether, he is a workman or not under Section 2(s) of the Industrial Disputes Act, 1947. The nature of duties and powers vested in the concerned employee would alone decide his status.

7 Document Exhibit C-15 before the Industrial Court are the Rules applicable to the Petitioner showing that his post of Junior Engineer is included in Group-2 category. Exhibit C-18 is an administrative circular dated 26.06.2006 by which the Junior Engineer was empowered to grant leave to Group-3 employees. Rule 87 of the Service Rules empowered the Petitioner to take disciplinary action against Group-3 and Group-4 categories of employees and impose minor punishment on them. He was also empowered to record disciplinary action taken against such employees in their service books.

8 The learned Division Bench of this Court, in the matter of *Chandrashekhar Chintaman Vaidya v/s National Organic Chemical*, 2010 (II) CLR 121 : [Letters Patent Appeal No.130/2009 in Writ Petition No.4980/2008 decided on 26.02.2010 (Nagpur Bench)], while dealing with the issue of workman, has laid down the tests for deciding the status of an employee.

9 Considering the above fact situation and considering the ratio in *National Organic Chemical* (supra), in my view, the Petitioner, who was empowered to exercise his powers under Exhibits C-15 and C-18, could not be said to be workman.

10 In the light of the above, this Writ Petition is devoid of merit
is, therefore, dismissed.

11 However, needless to state, since the complaint has been
dismissed on account of being untenable in law, the Petitioner would be
entitled to seek redressal of his grievance in accordance with law as may
be applicable.

kps

(RAVINDRA V. GHUGE, J.)