

sg

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2924 OF 2002

Ganesh K. Panambure

...Petitioner

VS

M/s. V.I.P. Industries Ltd. & Ors.

...Respondents

.....

Mr. A.S. Peerzada, for the Petitioner.

Mr. Prithvi Raj Singh, for Respondent Nos. 1 and 2.

.....

CORAM : S.C. GUPTE, J.

DATED: AUGUST 11, 2016

P.C.:

. Heard learned Counsel for the parties. The petition challenges a common order and judgment, by which the Industrial Court, Mumbai dismissed two complaints of unfair labour practice filed by the Petitioner herein.

2. The Petitioner worked as a Purchase Officer with the first Respondent. The record of the complaints bears out that the Petitioner was originally employed as a Clerk in the Purchase Department of M/s. Blowplast Ltd. (the predecessor-in-title of the first Respondent Company). He held this post till May 1987. During this period, the Petitioner was promoted from Grade-IV to Grade-I in the category of Clerks. It is an admitted position that in May 1987 he was promoted as a Purchase Officer and held that position till his transfer vide order

dated 19 April 1989. The transfer order was challenged in his first complaint, namely, Complaint (ULP) No.1223 of 1989. By way of an ad-interim order passed on 3 August 1989, the first Respondent was restrained from giving effect to the transfer order. By its further order dated 10 April 1990, the Industrial Court allowed the Petitioner's application for interim relief. It confirmed the stay granted to the transfer order pending hearing of the complaint, but directed, as and by way of a stop-gap and interim arrangement, that the Petitioner shall work as a Supervisor on behalf of the first Respondent with the Clearing and Forwarding Agents of the Company at a particular place till the decision of the complaint. It is the case of the Petitioner that, after he reported to this new location, he was put through various kinds of harassment, including non-payment of his wages. That led to the filing of the second complaint, namely, Complaint (ULP) No.928 of 1990. Both these complaints were clubbed together by the Industrial Court. In the trial that ensued, the first Respondent disputed the relationship of employer and employee between the first Respondent Company and the Petitioner. The Industrial Court, after taking into account the documentary and oral evidence before it and after hearing the parties, came to a conclusion that the Petitioner was not an employee within the meaning of Clause (5) of Section 3 of the MRTU & PULP Act ("Act") and, on that basis, dismissed both the complaints. That order is challenged in the present petition.

3. If one has regard to the impugned order, it appears that the Industrial Court has based the same on the documentary as well as oral evidence led at the trial. The evidence bears out that the Petitioner, who

was initially in Grade-IV as a Clerk in the Purchase Department, was promoted from time to time, first to Grade-III as 'Store Assistant', then to Grade-II as 'Store Supervisor' and, thereafter, in Grade-I as 'Senior Assistant'. These grades are in accordance with the settlement applicable to the first Respondent's workmen. After his promotion to Grade-I, admittedly, the Petitioner was promoted further as a 'Purchase Officer'. The Purchase Officer, according to the first Respondent, belongs to the category of managerial staff and does not come under the settlement for workmen. The Court has considered the letter of appointment issued to the Petitioner in this behalf and concluded that the complainant was, in fact, carrying out duties of managerial staff and not as a workman. The Court held that the Petitioner's duties consisted of two independent functions with regard to contacting suppliers in Mumbai, from where the first Respondent was purchasing most of its raw material and to co-ordinate and regulate proper supply to the Company's factories at Jalgaon, Nashik and Nagpur. The Court held that these duties were managerial and incidental activities of clerical nature performed along therewith did not change the status of the Petitioner from a manager to a workman. The Court also took into account the Petitioner's admission that his service conditions were different from the service conditions of Clerks. The Court considered the Petitioner's admission about having received a copy of the service conditions along with the letter of appointment. After comparing these service conditions to the service conditions placed on record, the Court came to a conclusion that the service conditions referred to by the Petitioner were the same as those placed on record and these were applicable only to the managerial staff. Based on this analysis of evidence, the Court found

that the Petitioner was a manager employed by the first Respondent and did not answer the definition of an employee within the meaning of Clause (5) of Section 3 of the Act. The Petitioner, in other words, was not a workman as defined in Clause (s) of Section 2 of the Industrial Disputes Act, 1947, or a sales promotion employee as defined in the Sales Promotion Employees (Conditions of Service) Act, 1976. In the premises, the Court decided the issue of jurisdiction against the Petitioner.

4. The foregoing discussion indicates that the conclusion drawn by the Industrial Court is clearly supported by evidence. It is not a conclusion based on no evidence. So also, it cannot be said that the Court has either disregarded any relevant or germane material or taken into account any irrelevant or non-germane material for arriving at its conclusion. The conclusion is clearly a possible conclusion based on the material on record.

5. Mr. Peerzada, learned Counsel for the Petitioner, draws my attention to the show cause notice issued by the first Respondent to the Petitioner on 24 August 1992. He submits that this show cause notice refers to model standing orders applicable to the Petitioner. He also draws my attention to the cross-examination of the first Respondent's witness, where the witness accepts that the Petitioner has not issued any purchase order or was not even authorised signatory for placing orders. He also invites my attention to the further cross-examination of the first Respondent's witness, where the witness has admitted that the Petitioner's signature does not appear on the appointment letter, and

that there is no date or signature appearing on the service conditions, which are placed on record by the first Respondent. These are all matters of appreciation of evidence. We are not concerned here with sufficiency or otherwise of the evidence so as to sustain the conclusion of the lower Court. Besides, these are not matters, which comprehensively rule out the conclusion drawn by the Industrial Court. The fact that the Petitioner had not actually issued any purchase order or that he did not have any authority to sign a purchase order does not detract from his performance of independent functions as a managerial employee, namely, contacting suppliers at Mumbai for purchase of items and coordinating and regulating proper supply to the Company's factories, as indicated in the impugned order. So also, want of the Petitioner's signature on the appointment letter or of any authorized signatory of the Company on the service conditions is neither here nor there. The Industrial Court has proceeded on footing that admittedly the appointment letter and service conditions were in fact received by the Petitioner, and the service conditions duly received by him were the same as those placed on record. That these service conditions do not bear the signature of an authorized representative of the first Respondent does not change the applicability of the service conditions, as long as the Petitioner accepts that these service conditions were received by him when he was appointed in the grade of Manager.

6. In the premises, the impugned order of the Industrial Court is clearly sustainable and no interference is called for within the parameters of judicial review permissible under Articles 226 and 227 of the Constitution of India. There is, thus, no merit in the petition. The

rule is, accordingly, discharged and the petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)