

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2402 OF 2016

Raghunath Chudaman Chaudhri,
Age-52 years, Occu-Nil,
R/o At Post : Tal.Yawal,
Dist. Jalgaon

-- PETITIONER

VERSUS

Nhavi Dudh Utpadak Sahkari
Sanstha Maryadit Nhavi
Tal.Yawal, Dist.Jalgaon,
Through its Chairman

-- RESPONDENT

Mr.V.A.Pawar and Mr.P.B.Salunke, Advocate for the petitioner.
Mr.M.S.Deshmukh h/f Mr.S.R.Patil, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 01/03/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the judgment of the Industrial Court dated 24/07/2015 by which Revision (ULP) No.53/2014 filed by the respondent, has been allowed. The judgment of the Labour Court dated 09/12/2014 is quashed and set aside and Complaint

(ULP) No.45/2006 has been dismissed.

3. I have considered the strenuous submissions of the learned Advocates and have gone through the petition paper book with their assistance.

4. The Labour Court, by judgment dated 09/12/2014, has allowed the ULP complaint. The termination of the petitioner dated 23/09/2006 is set aside and he is granted reinstatement with continuity and 50% back wages.

5. Considering the various facets involved in these proceedings, the Industrial Court has concluded that the petitioner is not a workman u/s 2(s) of the I.D.Act and is not an employee u/s 3(5) of the MRTU and PULP Act, 1971 and hence his complaint before the Labour Court was not tenable.

6. The learned Division Bench of this Court, in the matter of Chandrashekhar Chintaman Vaidya Vs.National Organic Chemical Industries Ltd., Akola, [2010(3) Mh.L.J. 434] has settled the parameters for deciding as to whether a claimant is a workman and an employee. The said principles read as under :-

“33. At the cost of repetition, it needs to be referred that in the evidence led by the complainant, he has deposed in specific terms that:-

[a] He was doing the clerical work.

[b] He was not entrusted or invested with managerial and administrative powers.

[c] He has never supervised the work of any other worker or subordinate to him.

[d] He used to do the work of scrutinizing the purchase orders and make entries thereof into the register.

[e] He used to follow up purchases ordered by his controlling officer.

[f] Except the nomenclature as a supervisor, he had no supervisory duties.

36. The law as to basic test as to facts to be proved for holding a person to be a workman under [Section 2 \(s\)](#) of the [Industrial Disputes Act](#) can be said to be settled, and can be summarized as follows:-

[a] The person does menial, ministerial or clerical work.

[b] If any of the parts of his duties involves any sort of supervision, which is on the material and not on the

men.

[c] The predominant nature of duties discharged by the person, i.e., the part of supervisory duties, if any, is not predominant.

[d] What is seen to be is not the designation and / or nomenclature, but performance of duties.”

7. I have gone through the cross-examination of the petitioner before the Labour Court, which is in Marathi. When translated in English, the important statements made by him read as under :-

[a] I am the Secretary of the respondent/Establishment.

[b] I look after the entire management of the establishment.

[c] There are 6 employees (1 Assistant Secretary, 3 Clerks, 1 Measurer and one Peon) under my supervision and control.

[d] These employees seek leave and I grant their leaves.

[e] The bye-laws of the establishment define my nature of duties and I abide by the same.

[f] I have read and understood the bye laws.

[g] I am the only Manager / Secretary with the respondent/ Establishment.

[h] The Chairman of the Society works for only 1 or 2 hours and I look after the day to day management of the establishment .

[i] If any employee desires to urgently seek leave in emergency, and if the Chairman is not available, I sanction the same.

[j] There are many other employees over whom I exercise supervision and control.

[k] I am earning the highest salary in the respondent/ Establishment.

8. After considering the above aspects and considering the law laid down in the matter of Chandrashekhhar Chintaman Vaidya (supra), I find that the Labour Court had erred in concluding that it had jurisdiction to entertain the ULP complaint of the petitioner. The Industrial Court has rightly come to a conclusion that the petitioner is not a workman.

9. Considering the above, I do not find that the impugned judgment of the Industrial Court dated 24/07/2015 could be termed as being perverse or erroneous. The Industrial Court has rightly exercised its revisional jurisdiction u/s 44 and has rightly concluded that the judgment of the Labour Court is perverse and erroneous.

10. Considering the above, this petition, being devoid of merit, is therefore dismissed. Rule is discharged.

11. Needless to state, since the complaint of the petitioner is held to be untenable in law before the Labour Court, in the event the

petitioner desires to avail of any remedy as may be permitted in law, the time spent by the petitioner before the Labour Court from 30/12/2006 till the judgment of this Court, shall be a ground for condonation of delay.

(RAVINDRA V. GHUGE, J.)