

Subhash Tukaram Nikam	...	Petitioner
Vs.		
The Maharashtra State Co-operative Marketing Federation Limited	...	Respondent

Mr. Neel G. Helekar for Petitioner.
Mr. Suresh S. Lanke for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JULY 07, 2017

P.C. :

Heard Mr. Helekar, learned Counsel for petitioner and Mr. Lanke, learned Counsel for respondent at length.

2. By this Petition under Articles 226 and 227 of the Constitution of India, petitioner has challenged the judgment and order dated 09.02.2015 passed by the learned Presiding Officer, Labour Court No.1, Kolhapur in Application (IDA) No.12 of 2012. By that order, the Labour Court dismissed the application filed by the petitioner under Section 33-C(2) of the Industrial Disputes Act, 1947 (for short 'Act') on the ground that it is not maintainable.

3. Rule. Mr. Lanke waives service for respondent. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Helekar invited my attention to paragraph 12 of the impugned order. In paragraph 12, the Labour Court

considered the submission advanced on behalf of the respondent that respondent has disputed the status of the petitioner as the 'workman' or 'employee'. Respondent came with the case that the petitioner was working as a District Marketing Officer and consequently, he cannot claim to be a workman. The Labour Court also referred to the decision of this Court in ***Central Group and others Vs. Motiram S. Thakre, 2006 (1) Mh.L.J. 422*** and held that Labour Court under Section 33-C(2) of the Act cannot deal with the issue relating to the status of the applicant as a 'workman' or 'employee' and such issue is not incidental issue in proceedings under Section 33-C(2) of the Act.

5. Mr. Helekar relied upon decision of this Court in ***Central Group ad others Vs. Narayan Gangaram Patil, (2008) 6 Bom.C.R.567***, and in particular paragraph 7 to contend that Division Bench held that as an incidental issue, Labour Court can decide the status of the employee. He, therefore, submitted that the impugned order may be set aside thereby directing the Labour Court to decide the proceedings afresh as also the question whether petitioner is a workman or not as an incidental issue.

6. On the other hand, Mr. Lanke supported the impugned order. He submitted that petitioner was working as a District Marketing Officer and was getting salary of Rs.24,291/- per month and therefore, he cannot claim to be a workman. The Labour Court, therefore, rightly rejected the application on the ground that it is not maintainable.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. In paragraph 12 of the impugned order, the Labour Court has observed thus,

“12. The respondent federation has disputed the status of the applicant as the 'workman' or 'employee'. The applicant was working as a District Marketing Officer with the respondent federation. The present application is u/s.33-C(2) of the I.D. Act. The issue relating to the status of the claimant as being the workman or employee of the opponent cannot be adjudicated upon by the Labour Court in the proceeding u/s.33-C(2) of the I.D. Act. Our Parent High Court in Central Group and Ors. Vs. Motiram S. Thakre 2005 1 CLR 680 held that the Labour Court u/s.33-C(2) of the Act cannot deal with the issue relating to the status of the applicant as a 'workman' or 'employee' and such issue is not an incidental issue in such proceeding but it relates to jurisdictional facts and in the absence of such jurisdictional fact, the Labour Court is not entitled to entertain an application u/s.33-C(2) of the I.D. Act.”

8. Mr. Helekar relied upon paragraph 7 of the decision in **Narayan Gangaram Patil** (*supra*). Paragraph 7 reads thus,

“7. It is thus well settled that while deciding the application under Section 33-C(2) of the I.D. Act, the Labour Court has the power to decide incidental issues. The application filed under Section 33-C(2) of the I.D. Act is akin to the executing proceedings. If the applicant's entitlement is not preadjudicated or based on a statutory claim or claim arising from a settlement, the Labour Court cannot entertain the claim. There is a distinction drawn between the terms "entitlement" and "status". It is well settled that if in an application under Section 33-C(2) of the I.D. Act, the employer claims that the applicant is not a workman within the meaning of Section 2(s) of the I.D. Act, the same can be decided by the Labour Court as an incidental issue. Similarly, if the employer disputes the employer-employee relationship, the Labour Court has the jurisdiction to decide the same as an incidental issue while deciding an application filed under Section 33-C(2) of the I.D. Act.”

9. In view of paragraph 7, extracted hereinabove, in an application under Section 33-C(2), if the employer claims that applicant is not a workman within the meaning of Section 2(s) of the Act, the same can be decided by the Labour Court as an incidental issue. Similarly, if the employer disputes the employer-employee relationship, the Labour

Court has the jurisdiction to decide the same as an incidental issue while deciding an application filed under Section 33-C(2) of the Act.

10. In view thereof, impugned order cannot be sustained and is accordingly set aside. Application (IDA) No.12 of 2012 filed by the petitioner stands revived. The Labour Court will decide the application as also the status of the petitioner, namely, whether he is a workman or not in the light of paragraph 7 of the decision in **Narayan Gangaram Patil** (*supra*), extracted hereinabove. All contentions of the parties are expressly kept open. Learned Counsel for the parties submit that they will appear before the Labour Court 01.08.2017 and for that purpose, no fresh notice be issued to them. Labour Court is requested to decide the proceedings as expeditiously as possible and in any case, within 3 months from the production of the authenticated copy of this order. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab