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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2623 OF 2016

The Veershaiva Co-operative Bank Ltd.,
(presently under Board of Liquidators)
having its Administrative Office at
Plot No.31, Basaveshwar Bhavan,
D.K. Sandhu Marg, Chembur,
Mumbai - 400 071.

..PETITIONER

VERSUS

- 1) Shri. M.S. Hunachagi,
residing at F-5, Navkar CHS Ltd,
Vidyamandir Marg, Ambadi Road,
Vasai Road (West),
Thane- 401 202
2. Shri V. L. Kamble,
Member Industrial Courts,
1st Floor, New Administrative Bldg.,
Bandra (East) Mumbai - 400 051

..RESPONDENTS

Mr A. G. Damale, Senior Advocate i/b Mr Piyush N. Shah, Advocate for
petitioner;
Mr A. S. Peerzada, Advocate for respondent No.1

CORAM : PRASANNA B. VARALE, J.

DATE : 21st September, 2017

ORAL ORDER:

By the present writ petition, the petitioner - Bank challenges the judgment and order dated 21st August, 2013, passed by the learned President of the Industrial Court, Maharashtra, at Mumbai, in Revision Application (ULP) No.58 of 2013 in Complaint (ULP) No.242 of 2010.

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2. The petitioner is a Co-operative Bank, having its Head Office at Chembur and Branches at various places in and outside Mumbai.

3. It is submitted that by an order dated 30th December, 2011, the Reserve Bank of India issued an order for cancellation of licence to carry on business of the petitioner Bank and the petitioner Bank is presently under Board of liquidator. Respondent No.1 was initially appointed as a Clerk on 1st July, 1991 in the petitioner Bank, namely, Veershaiva Co-operative Bank Ltd. (hereinafter referred to "the Bank" for the sake of brevity).

4. In the year 2001, respondent No.1 was promoted as a Supervisor, vide order dated 1st August, 2001. The document placed at Exh.'A' shows that in the year 2005, the Resolution was passed by the petitioner Bank, thereby respondent No.1 was placed in Group 'B' category of the Supervisor. Name of respondent No.1 finds place at Sr. No.12 in the said Resolution. It is the case of the petitioner - Bank that respondent No.1, being Supervisor, placed in the category of Group 'B' category of Supervisor, was authorized to sign and operate for and on behalf of the Bank Fixed Deposits and Current Accounts. The perusal of the record further shows that respondent No.1 was served with charge-sheet on 2nd January, 2007 and an enquiry was also conducted. On conclusion of the full and fair enquiry conducted by the petitioner Bank, respondent No.1 was placed under suspension vide order dated 1st November, 2006.

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5. Being aggrieved by the said suspension order, respondent No.1 approached learned Judge of the Labour Court, Mumbai, by filing Complaint (ULP) No. 242 of 2010. The Petitioner - Bank opposed the complaint by filing written statement. The evidence was led by both the parties. Learned Judge of the Labour Court, on hearing both the parties, framed issues, which read thus:-

Sr. No.	ISSUES	FINDINGS
1.	Whether the complainant is workman?	No
2.	Whether the enquiry conducted against the complainant was fair and proper?	Does not survive
3.	Whether the complainant proves that, the respondents indulged in unfair labour practices?	Does not survive
4.	Whether the complaint is maintainable?	Does not survive
5.	Whether complainant is entitled to reliefs claimed?	Does not survive
6.	What order?	As per final order.

6. Learned Judge of the Labour Court, on appreciation of the contentions raised by the parties and on appreciation of the evidence led by them, recorded negative finding on issue No.1 and further held that the other issues do not survive for consideration.

7. Being aggrieved by the order passed by the learned Judge, Labour Court, dated 25th March, 2013, respondent No.1 preferred Revision

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Application (ULP) No. 58 of 2013 before the Revisional Court. Learned Revisional Court, by its judgment and order dated 21st August, 2013, allowed the revision, thereby quashed and set aside the judgment and order passed by the learned Labour Court, by holding that the revision applicant (original complainant / respondent No.1 herein) is a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and an "employee" within the meaning of Section 3(13) of the Maharashtra Industrial Relations Act, 1946 and under Section 3(5) of the Act. Learned Revisional Court, therefore, remitted the matter back to the learned Labour Court, Mumbai for deciding rest of the issues, in accordance with law.

8. Being aggrieved by the judgment and order passed by the learned Revisional Court, the petitioner is before this Court in the present writ petition.

9. Heard Mr Damale, learned Senior Advocate appearing for the petitioner Bank and Mr Peerzada, learned Counsel appearing for respondent No.1.

10. Learned Senior Advocate for the petitioner vehemently submitted that though the Revisional Court observed that it is having limited scope and powers in the Revisional jurisdiction and while exercising such revisional jurisdiction, the Revisional Court is not expected to re-appreciate and

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re-asses the entire evidence and inspite of these observations, the Revisional Court re-assessed and re-appreciated the evidence and material and allowed the revision.

11. Mr Damale, learned Senior Advocate appearing for the petitioner Bank further submitted that exercise of the Revisional Court was, as if the Revisional Court is an appellate forum and by proceeding with the matter with a such erroneous approach, the learned Revisional Court allowed the revision. As such, the judgment and order impugned herein is clearly unsustainable.

12. Learned Senior Advocate for the petitioner then submitted that the petitioner - Bank submitted the evidence before the learned Labour Court with the help of documentary and the learned Labour Court had rightly observed that respondent No.1 is not a "workman" and the finding of the learned Revisional Court is contrary to the evidence placed on record and also without properly considering the judgment of this Court.

13. Learned Senior Advocate for the petitioner further submitted that there was no material submitted before the Court in the form of duty list and while observing contrary to this, the learned Revisional Court stated that respondent No.1 asserted his submission that he was working as a Clerk in view of the duties which were being performed by him.

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14. Learned Senior Advocate then submitted that the learned Revisional Court also committed a serious error in holding nature of duties of Supervisor of signing Demand Drafts, Cheques and Pay Orders on behalf of the Bank and it was the duty of clerical in nature.

15. Then learned Senior Advocate invited attention of this Court to the evidence placed before the learned Labour Court. It was submitted by the learned Senior Advocate that even in the evidence submitted before the learned Labour Court, respondent No.1 clearly admitted that he was performing Supervisory functions. He then submitted that respondent No.1 admits that the charge-sheet was issued to him, an enquiry was conducted and he also admits in his evidence that he committed a mistake, as such, this admission of respondent No.1 is clearly an admission of guilt.

16. He then submitted that the learned Labour Court arrived at the findings on proper appreciation of the material and assigned the cogent reasons for arriving at such conclusions. As such, the learned Revisional Court was not justified in allowing the revision on an erroneous observation that a cryptic and erroneous order is passed by the learned Labour Court.

17. Learned Senior Advocate appearing for petitioner placed heavy reliance on the judgment of this Court in the matter of **Standard Chartered Bank Vs. Vandana Joshi & anr.**, reported in **2010 I CLR 163**.

18. Mr Peerzada, learned Counsel appearing for respondent No.1 vehemently opposed the petition. He supports the order passed by the learned Revisional Court. He also invited my attention to certain documents placed on record, namely, agreement between the employer i.e. Chairman of the petitioner Bank and the representative of employees i.e. President and the General Secretary of the Co-operative Bank Employees Union, Mumbai. He also submitted that the evidence tendered on behalf of the petitioner Bank of one witness, namely, Vinod S. Swami supports the case of respondents.

19. With the assistance of both the learned Counsel appearing for the respective parties, I have gone through the material placed on record. On going through the material placed on record, I find considerable merit in the submission of learned Advocate appearing for the respondent No.1. The documents placed on record show that respondent No.1 was placed in the category of Group 'B' Supervisor. The Resolution was passed to that effect on 28th January, 2005. Respondent No.1 finds place at Sr.No.12 in the said Resolution. It would be useful to refer the opening part of the Resolution and the same reads thus :-

"Resolved that the below mentioned Officials of the Bank be
and are hereby authorized to sign and operate upon, Jointly.

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Any two, Any One from Group "A" and Any One from Group "B", for and on behalf of The Veershaiva Co-operative Bank Ltd., the Fixed Deposit and Current Accounts held by the Bank Branches as specified here below." (emphasis supplied)

20. It is submitted by the learned Senior Advocate for the petitioner that the Resolution clearly shows that respondent No.1 was discharging supervisory duties with an authorization to sign and operate the Fixed Deposits and Current Accounts and as such, he could not have taken a stand that he was merely doing clerical duties. At Exh.'B', copies of 4 cheques are also placed on record to show that respondent No.1 had signed the said cheques for the petitioner Bank as an authorized officer.

21. Learned Senior Advocate for the petitioner also invited my attention to the evidence of respondent No.1 submitted before the learned Labour Court and in the examination-in-chief, he admitted that he joined services with the petitioner Bank on 1st July, 1991 as a Clerk and later on he was designated as a Supervisor w.e.f. 1st August, 2001, in the grade 405-25-480-30-600-35-740-40-900-45-1030-50-1280-55-1500-60-1800.

22. It is submitted in the examination-in-chief by respondent No.1 that he used to do the work which was nothing but a clerical work, required to be done by senior clerk, without having duties and any powers of supervisory nature.

23. The attention of this Court was invited to the cross-examination of respondent No.1 and the same reads thus:-

"..... It is true that, I have received the suspension order on 1/11/2006. It is true that, I replied the suspension order 17/11/2006 and 1/12/2006. It is true that, I was chargesheeted alleging that, I permitted overdraw over the sanctioned limit while working as supervisor. It is true that, in the letter dtd. 17/11/2006 and 1/12/2006, I have not disputed that, I am not the supervisor. it is true that, in letter dtd. 17/11/2006, 1/12/2006 and 8/1/2007, I admitted my guilt."

24. Perusal of the cross-examination further shows that respondent No.1 stated in the cross-examination which reads thus:-

"..... I got one increment after my promotion. Accordingly Basic Pay, DA, HRA were increased proportionately. It is not true to suggest that, after promotion my nature of duties were changed. It is not true to suggest that, authorization of the instrument is given after promotion. It is true that, as per the resolution passed by the board of directors meeting dtd. 20/1/2005, I was authorized to sign and operate the fixed deposits and current accounts held by the bank, jointly, any two,

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any one from group-A, and anyone from group-B. My name is at sr. no.12 at group-B....."

25. It is also stated by respondent No.1 in the cross-examination and the same reads that :

"..... I have also signed the pay order issued by the bank. It is true that, copy of some of the pay orders of the respondent bank is filed on record below list Exh.C-9, at page no.11 to 32. Those pay orders bears my signature. It is true that, I have enjoyed the benefits applicable to the post of supervisor, as per the agreement signed by the union....."

26. Perusal of the judgment and order passed by the learned Judge of the Labour Court, dated 25th March, 2013, shows that learned Judge of the Labour Court dealt in detail with the evidence submitted by the respective parties. The above referred admissions of respondent No.1 find place in the reasoning assigned by the learned Judge of the Labour Court.

27. Learned Counsel for respondent No.1 made an attempt to submit before this Court that the evidence of petitioner Bank's witness supports the case of respondent No.1. On going through the evidence, it reveals that this witness, namely, Vinod S. Swami, who was working as a Manager of the

Bank at the relevant time and was subjected to cross-examination. It would be useful to refer to the statement of the said witness and same reads thus:-

"..... It is true that, supervisor checks the entries of debit and credit taken by the clerk. He verifies the amounts in words and figures, signature, account number, etc. It is true that as regard the authorization work, the supervisor is only required to do the above work. Data entry in the computer with regard to account opening, cheque book issue entries, signature verification for issuance of cheque books, loan forms or any other purpose is done by clerk. The customer's desire of taking loan, submits the loan form alongwith the documents in the branch to supervisor. Supervisor verifies the documents and submit it to the manager. Manager gives his opinion and forward it to the head office. The required documents are provided in the loan manuals prepared by the board of directors. It is true that, in the loan manual the list of documents is given."

28. Learned Senior Advocate for the petitioner placed heavy reliance on the judgment of this Court in the matter of **Standard Charter vs. Vandana Joshi** (cited supra). It would be useful to refer the observations of this Court, which read thus:-

11. The question as to what constitutes work of a clerical nature has been dealt with in the judgment of the Supreme Court in the [Management of M/s. Sonapat Co-operative Sugar Mills Ltd. v. Ajit Singh](#)⁵. Mr. Justice S.B. Sinha speaking for a Bench of two Learned Judges of the Supreme Court held thus :

"A person who performs one or the other jobs mentioned in the aforementioned provisions only would come within the purview of definition of workman. The job of a clerk ordinarily implies stereotype work without power of control or dignity or initiative or creativeness. The question as to whether the employee has been performing a clerical work or not is required to be determined upon arriving at a finding as regard the dominant nature thereof. With a view to give effect to the expression to do "any manual, unskilled, skilled, technical, operational, clerical or supervisory work", the job of the concerned employee must fall within one or the other category thereof. It would, therefore, not be correct to contend that merely because the employee had not been performing any managerial or supervisory duties, ipso facto he would be a workman."

12. In the present case, the work that was being rendered by the First Respondent and for which she was employed as a Personal Financial Consultant cannot be regarded as work of a clerical nature. The Court must have regard to the dominant nature of the work or duties assigned. The dominant nature of work or duties for which the First Respondent was engaged cannot be regarded as stereotypical, without an element of initiative or creativeness, which is the test which is elucidated in the judgment in Sonapat Co-operative Sugul Mills Ltd. (supra). During her evidence the First Respondent in fact admitted in terms that the job description included work that would contribute to the business of the bank. The First Respondent admitted that a term deposit database was provided to her and the purpose of giving such a database was basically for generating and securing new business opportunities. While doing

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such work the First Respondent undoubtedly had to do incidental work including dealing with net banking requests, requests for closure of accounts or change of name and the management of the information system and data entry. What the Court must have due regard to, however, is the overall nature of the duties and responsibilities that are attached to the job. The duties and responsibilities that were attached to the job of the First Respondent were not of a clerical nature. As an employee engaged in contributing to the business of the bank the First Respondent was recruited to perform duties which cannot be regarded of a clerical nature.

15. The Court cautioned against placing the discourse on [Section 2\(s\)](#) into a strait-jacket, in the following observations :

"In deciding a case such as the present, the Court must be careful not to place its construction of legal categories into a straitjacket. Business in recent years has been marked by rapid organisational changes. The swift evolution of technology has led to a quantum change in the business environment. Modern managements have to alter the structure of organisation in order to meet the exigencies of the time. Every employee in the managerial cadre may not necessarily have the power to appoint or dismiss personnel nor indeed would an employee engaged mainly in a managerial or administrative capacity always have the power to sanction leave applications. Similarly, the test of the existence of control over subordinates may be applicable in certain factual situations, but not necessarily in every conceivable case. In others, control over subordinates may not necessarily be by all personnel in the managerial cadre. The number and strength of the subordinate staff depends upon the nature of the business that is being conducted. It would, for instance, be wholly inappropriate to apply the same test

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which would govern the organisation of a traditional form of manufacturing business to a business founded on software, biogenetics or a business at the cutting edge of technology. The interpretation of [Section 2\(s\)](#) must be such as would not lead to stultifying innovation, development and change in managerial practice. Business managers should have a high degree of latitude to promote efficiency in a competitive business environment. Courts are ofcourse vigilant to deal with subterfuge. The important thing for the Court is to evaluate the position of an employee with reference to the nature of his duties in the context of the business where those duties are performed."

18. The fact that in an organizational structure the employee, in the course of the decision making process, is subject to checks and balances is not a matter which would establish that she / he is a workman within the meaning of [Section 2\(s\)](#). Modern forms of business in corporate organizations put into place a carefully crafted process of checks and balances. Rarely, if ever, would an employee have authoritarian control over business decisions. Employees are made subject to checks and balances both at the lateral and vertical level. Managerial decisions are subject to verification and approval.

The fact that decisions of an employee are subject to verification or subject to a system of controls and balances does not establish that the employee is a workman within the meaning of [Section 2\(s\)](#).

Managers do not become workmen because their decisions are structured by processes and approvals. Absolute autonomy is not the norm in managerial decision making. Nor does the law insist on absolute discretion or absolute autonomy for a person to be a manager. Basically the answer to the question must depend upon the dominant nature of the duties and responsibilities.

29. Considering the above referred highlighted observations on the backdrop of the evidence tendered before the learned Labour Court, I find considerable merit in the submission of learned Senior Advocate appearing

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for the petitioner. He is also justified in submitting that the Revisional Court ought not to have acted as an appellate forum, sitting over the judgment passed by the learned Labour Court and an exercise undertaken has resulted in exceeding the jurisdiction of the Revisional Court, as such, the same is unsustainable.

30. It was also submitted on behalf of respondent No.2 that the learned Labour Court, on recording a negative finding on issue No.1, left the other issues without any consideration. Learned Counsel for respondent No.1 submitted that respondent No.1 had also raised the ground that an enquiry conducted against him was not fair and proper. There was an inordinate delay in the enquiry. It was further submitted by the learned Counsel for respondent No.1 that as the learned Judge of the Labour Court had committed an error in not recording findings on the other issues, thereby rejecting contentions of respondent No.1 at the threshold and this would cause a prejudice to him.

31. It is an admitted position that the learned Judge of the Labour Court passed the order with the observations about issue Nos.2 to 5 stating that :

"32. As issue no.1 is answered in negative, the complaint itself is not maintainable before this court and therefore the other issues does not survive. With such findings I proceed to

pass the following order."

32. The submission of the learned Counsel for respondent No.1 needs consideration and the learned Counsel for respondent No.1 was justified in submitting that learned Judge of the Labour Court ought to have recorded findings on the other issues by considering the same on the backdrop of the submissions and counter submissions of the parties.

33. As the learned Senior Advocate for the petitioner Bank is having no objection for consideration of the issues left unanswered by the learned Judge of the Labour Court, the following order is passed :-

- (i) The petition is dismissed.
- (ii) The order dated 21st August, 2013, passed by the learned Industrial Court, Mumbai is quashed and set aside.
- (iii) The matter is remitted back to the learned Labour Court, Mumbai for decision on issue Nos. 2 to 5.
- (iv) The parties to assist the Labour Court, Mumbai to decide the matter as expeditiously as possible.

(PRASANNA B. VARALE, J.)