

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1690 OF 2003
WITH
CIVIL APPLICATION NOS. 7498 of 2012, 12582 of 2012, 4907 of 2014,
4908 of 2014, 2078 of 2014

Nagraj s/o Janardan Patil,
Age major, Occ. Nil,
R/o. 182/2, Bhikamchand Jain Nagar
Opp. "Soani Apartments",
Shiva Association and Kirana Stores,
Jalgaon -1.

...Petitioner

versus

Jalgaon Zilla Sahakari Dudh Utpadak
Sangh Limited
P.O. Box No.32, Shivaji Nagar Road,
Jalgaon -1
(Notice to be served on its Manager-
Personal and Administration)

...Respondent

WITH
WRIT PETITION NO. 4028 OF 2003
WITH
CIVIL APPLICATION NO. 4909 OF 2014
WITH
CIVIL APPLICATION NO. 2079 OF 2016

Nagraj s/o Janardan Patil,
Age major, Occ. Nil,
R/o. 182/2, Bhikamchand Jain Nagar
Opp. "Soani Apartments",
Shiva Association and Kirana Stores,
Jalgaon -1.

...Petitioner

versus

Jalgaon Zilla Sahakari Dudh Utpadak
Sangh Limited
P.O. Box No.32, Shivaji Nagar Road,
Jalgaon -1
(Notice to be served on its Manager-
Personal and Administration)

...Respondent

.....
Mr. Nagraj Janardan Patil, petitioner in person
Mr. V.D. Hon, senior counsel, for respondent.
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment: 04.01.2018**

**Date of pronouncing
the Judgment: 30.01.2018**

JUDGMENT:-

1. Being aggrieved by the judgment and order dated 01.03.2003, passed by the learned Member, Industrial Court, Jalgaon in Revision Application (ULP) No. 177 of 2001, the original complainant has filed the writ petition No. 1690 of 2003.

2. Brief facts giving rise to the said writ petition are as follows:-

a) The petitioner-original complainant was in the employment of respondent Sangh as a Chief Security Officer since 1988. On account of alleged misconduct on the part of petitioner-complainant, respondent Sangh had issued a charge sheet against him, conducted departmental enquiry and awarded punishment of dismissal from service. Being aggrieved by the same, the petitioner-complainant filed complaint (ULP) No. 42 of 1999 in the Labour

Court, Jalgaon. It has been contended in the said complaint that the petitioner-complainant though serving as Chief Security Officer, he was not having administrative or managerial powers and he used to get the work done from the employees of security department as per the instructions and directions of his superior. Thus, in the capacity of employee, he has filed the said complaint. It has been also contended that departmental enquiry held against him was not fair, proper and in accordance with the principles of natural justice and findings of the Enquiry Officer were not based on legal and acceptable evidence. It has also been contended that though the charges were not proved against him, the Enquiry Officer has held that the same are proved and punishment imposed upon him is highly disproportionate looking to the gravity of misconduct. Thus, he has prayed for reinstatement in service with continuity in service and payment of full back-wages from the date of termination.

b) The respondent Sangh has strongly resisted the complaint by filing written statement at Exh.C-1. It has been contended that the complainant was occupying the post of Chief Security Officer which is managerial/supervisory and administrative in nature. The appointment of the petitioner-complainant was made by the Board of Directors to whom he was responsible. It has been also contended that 15 to 20 persons were working under the control of petitioner-

complainant and he had power to decide their time table of work and had full control over them. The petitioner-complainant had power to sanction their leaves etc. and write confidential reports also. It has been thus contended that the complainant was not employee under Section 3(5) of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practice Act, 1971 (hereinafter for short referred to as the "MRTU and PULP Act") and a workman under Section 2(s) of the Industrial Dispute Act. It has also been specifically contended that the Labour Court has no jurisdiction to try and entertain the complaint. It has also been denied that the respondent Sangh is engaged in unfair labour practice as alleged in the complaint. It has also been contended that the enquiry held against the petitioner-complainant was fair, proper and in accordance with principles of natural justice. The findings of the Enquiry Officer are based on legal and acceptable evidence. Further, the charges levelled against the complainant were duly proved in the enquiry. After considering the gravity and the misconduct, the complainant was rightly punished.

c) Learned Judge of the Labour Court has decided issue No.1 and held that the enquiry conducted against the complainant is fair, proper and in accordance with principles of natural justice vide order dated 6.9.2000. However, by order dated 17.5.2001, the learned

Judge of the Labour Court has recorded a finding to issue No.3 as proved and issue No.7 as not proved and passed the final order. The learned Judge of the Labour Court declared that the petitioner complainant is an employee within the meaning of Section 3(5) of the MRTU and PULP Act and a workman within the meaning of Section 2(s) of the Industrial Dispute Act.

d) Being aggrieved by the judgment and order passed by the Labour Court, Jalgaon, the respondent Sangh has preferred Revision Application No. 177 of 2001 in the Industrial Court at Jalgaon. The learned Member of the Industrial Court, by judgment and order dated 10.12.2001, partly allowed the revision application and set aside the order dated 3.8.2001 of closing of evidence of the respondent Sangh and further confirmed the judgment and order passed by the Labour Court and directed the parties and the Labour Court to follow the time schedule of (04) four months for deciding the complaint on merits.

e) Being aggrieved by the judgment and order dated 10.12.2001, passed by the Industrial Court, the respondent Sangh had preferred writ petition No. 453 of 2002 before this Court. This Court has set aside the order passed by the Industrial Court in Revision Application No. 177 of 2001 so far as it relates to rejection of the revision application in respect of findings recorded by the Labour Court on

issue No.7. Accordingly, the order to that extent was set aside and the revision was remitted to the Industrial Court, Jalgaon to decide it in accordance with law. This Court directed the Industrial Court to decide the said revision afresh in the light of judgment of this Court in the case of ***Sadanand vs. Kirloskar reported in 2002 (4) Mh.L.J. 804*** by giving an opportunity to both the parties to make their submissions on the said issue.

f) After hearing both the parties, learned Member of the Industrial Court, Jalgaon by impugned judgment and order dated 1.3.2003 allowed revision application (ULP) No. 177 of 2001, quashed and set aside the order dated 17.5.2001 on issue No.7 and dismissed the complaint (ULP) No. 42 of 1999 by holding that the petitioner complainant does not fall under the category of an “employee/workman”. Being aggrieved by the same, the petitioner-complainant has preferred this writ petition.

3. The petitioner, who appears in person, submits that the learned Member of the Industrial Court did not apply its mind to the facts and circumstances as well as the evidence that has come on record. The petitioner submits that this court while disposing of writ petition No. 453 of 2002, by order dated 12.12.2002, directed the Industrial Court to decide the revision application afresh in the light of

the judgment of this Court in the case of **Sadanand (supra)**, by giving an opportunity to both the parties to make their submissions on the said issue. This Court has directed that the Industrial Court has to decide issue No.7 afresh on its own merits and on the basis of submissions advanced by respective parties. In view of above directions, the petitioner-complainant had submitted his written note of arguments before the Industrial Court vide Annexure F page 80 to 86 of compilation of this writ petition. In the said written note of arguments, the petitioner-complainant has referred various orders, communications, instances and the duties assigned to the petitioner-complainant from time to time by the respondent Sangh, which indicative of the fact that the petitioner-complainant was continued and consistently treated by respondent Sangh as workman/employee. However, the learned Member of the Industrial court has not considered the written note of arguments leave apart the documents, as referred in the said written notes of arguments. Learned Member of Industrial Court has acted illegally and completely with disregard to the orders passed by this Court in writ petition No. 453 of 2002. The learned Member of the Industrial Court has failed to consider that Mr. B.V. Garg, the Managing Director of the respondent Sangh admitted in no uncertain terms that the petitioner-complainant had no power to appoint the employees but was to work as per the appointment letter and his duties were

changed from time to time. It has also been admitted by him that entire action was being taken against the petitioner-complainant under the Model Standing Order. He has further admitted that it was the Manager (Administration) who was to look after and supervise everything about the security department as per Exh. U-35 and U-36. The respondent Sangh has treated the petitioner-complainant as an employees/workman and has from time to time taken action against him under the Model Standing Orders as per its own admissions. The respondent Sangh has continuously and consistently considered the petitioner-complainant as an employee and this was not the case of an isolated reference in the charge sheet to the Model Standing Order. The Industrial Court has also failed to consider para 22 of the written notes of arguments showing the previous conduct of the respondent Sangh, which is also subject matter of complaint (ULP) No. 1388 of 1999 in which the petitioner-complainant has challenged the stopping of his increment by order of Shri Joseph, the Administrator of the respondent Sangh. The petitioner party in person submits that the learned Member of the Industrial court has committed grave error in holding that the burden of proof that the petitioner-complainant was employee/workman is on the petitioner-complainant when in fact, issue No.7, as framed, cast burden on the respondent Sangh.

4. Learned senior counsel for the respondent Sangh submits that the petitioner-complainant was designated as Chief Security Officer and he was placed in the rank of Assistant Manager grade/level. The petitioner-complainant had authority and jurisdiction to recommend disciplinary action against the misdemeanors committed by or indulged into by the Security guards and the clerks, who were exclusively under his supervision, control and direction. It was only within his powers to recommend promotions, increments, sanction of leave, indenting of material, attend the meetings of departmental heads, accept joining reports and issue reliving letters, writing of confidential reports, as departmental head of the security guards and personnel etc. It was within his jurisdiction and powers to decide shifts, allot duties and shifts to security guards, issue necessary orders and instructions for day to day working of the security guards and prepare duty charts. In all there were 20 security guards and clerks working under him. Learned senior counsel submits that though the nature of duties are elaborately discussed and analyzed by the Industrial Court in not only the impugned judgment dated 1.3.2003 but also in another judgment dated 10.4.2003 in complaint (ULP) No. 1388 of 1999 filed by the petitioner complainant himself. The learned senior counsel submits that the issue of levelling charges upon the petitioner-complainant and serving upon him the charge sheet followed by the domestic enquiry,

a solitary incident, was the issue dealt with by this Court in writ petition No.453 of 2002 filed by the respondent Sangh. This Court while disposing of said writ petition has observed that the status of an employee is not to be decided on the basis of case law but it ought to be decided on the basis of oral and documentary evidence. Learned senior counsel submits that the respondent Sangh has examined four witnesses and the petitioner-complainant declined to cross examine the two out of four witnesses. Further the petitioner complainant has not entered into witness box to support his contention being a workman, nor examined any witness in his support. The learned Member of the Industrial Court has therefore, rightly decided the issue No.7 in favour of the respondent Sangh. The learned Member of the Industrial court has correctly followed the order dated 12.12.2002 passed by this Court in writ petition No. 453 of 2002.

5. Learned senior counsel in order to substantiate his submissions placed reliance on the following judgments:-

- i) Shaukat Adam Malim vs. Kokan Mercantile Co-operative Bank Ltd. and others, reported in 2002 (1) Mh.L.J. 760,
- ii) Northcote Nursing Home Pvt. Ltd. and another vs. Zarine H.

Rahina (Dr. Ms) and another, reported 2001 (3) Mh.L.J. 476.

iii) Arvind Ramdas Valke vs. Ispat Industries Ltd. and others.
Reported in 2009 (3) Bom.C.R. 471

The learned senior counsel submits that there is no substance in the writ petition and the writ petition is thus liable to be dismissed.

6. The petitioner party in person has vehemently submitted that even though the petitioner party in person has submitted his written notes of arguments before the Industrial Court, vide annexure F, Page 80 to 86 of the compilation of this writ petition and in the said written notes of arguments, he has referred various orders, communications, instances and the nature of duties assigned to the petitioner from time to time by the respondent Sangh. However, the learned Member of the Industrial court has not considered the written notes of arguments and the documents as referred in the said written notes of arguments. On the other hand, learned Member of the Industrial Court has considered the issue of charge sheet as an isolated incident and further erroneously held that the burden was on the petitioner to prove his case.

7. On careful perusal of annexure F of the writ petition, it appears that the petitioner herein has placed his written notes of arguments before the Industrial Court and also referred as many as 20 documents in the written notes of arguments to substantiate his contention that the petitioner is employee within the meaning of Section 3(5) of the MRTU and PULP Act and a workman within the meaning of Section 2(s) of the Industrial Dispute Act.

8. On further careful perusal of the impugned judgment and order, most particularly para 13 of the judgment, I find that the learned Member of the Industrial Court without referring written notes of arguments and the documents referred therein observed that this was the sole show cause notice and charge sheet issued to the petitioner-complainant and nothing has been brought on record from the side of the complainant to show that the respondent - Sangh has continuously and consistently taken action as per the Model Standing Orders. The learned Member has also observed that it is not submitted during the course of arguments that there are other instances also against the petitioner-complainant of issuing such show cause notices and charge sheet and it is isolated incident of charge-sheet in the present matter is very well distinguishable from a continuous and consistent course of conduct of the employer treating the employee as a "workman". Even though the burden of issue No.

7 was on the petitioner-complainant to prove his case but he has failed therein. The learned Member has therefore, concluded the issue by observing that on the facts as well as law, the findings on issue No.7 given and recorded by the learned Judge of the Labour Court in the impugned order therefore are not just, legal and proper and it is to be set aside and the Doodh Sangh is thus succeeded in making out the case causing interference with the impugned order.

9. It appears from the judgment and order passed by the Labour Court that the learned Judge of the Labour Court has elaborately discussed the oral evidence adduced by the respondent Sangh and also discussed the relevant documents such as Exh. U-35 and U-36. It is well settled that if the Industrial court comes to the conclusion that the Labour court has certainly ignored certain aspects of the evidence, then in that eventuality, it is permissible for the Industrial Court under Section 44 of the Act to appreciate that evidence and come to its own conclusion and such appreciation of evidence will not fall within the prohibited area of re-appreciation, re-assessment or reappraisal of the evidence recorded by the Labour court and in such appreciation of evidence, the Industrial Court certainly can come to the conclusion. Though this Court while disposing of writ petition No. 453 of 2002 in para 10 of the judgment and order has

prima facie observed that the Labour Court has lost sight of the structure of the management and further that the conventional tests cannot be applied in modern scientific management, however, further observed that the facts and circumstances of each and every case have to be considered and further to decide the duties whether they fall within the main definition of the workman or whether they fall in the exceptional portion of the definition of workman. Consequently, this court has directed the Industrial Court to decide the revision afresh by giving opportunity to both the parties to make their submissions on the said issue.

10. In the instant case, without referring the written notes of arguments, oral and documentary evidence, as discussed by the learned Judge of the Labour Court in detail, the learned Member of the Industrial Court has recorded the findings to issue No.7 in the negative. In view of the same, this Court has left with no other choice but to remand the matter to the Industrial court to decide it afresh on its own merits and on the basis of submissions advanced by the respective parties. It is made clear that this court has not touched to the merits of the matter.

11. In view of above discussion, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby partly allowed.
- II. The impugned judgment and order dated 01.03.2003, passed by the learned Member, Industrial Court, Jalgaon in Revision Application (ULP) No. 177 of 2001, is hereby quashed and set aside and the matter is remitted back to the Industrial Court, Jalgaon with following directions:-
 - a) Restore the Revision Application (ULP) No. 177 of 2001, at its original number and decide the same afresh on its own merits after giving an opportunity of being heard to both the parties.
 - b) The learned Member of the Industrial Court, Jalgaon shall dispose of the said revision application within three months from today.
 - c) The parties shall appear before the Industrial Court, Jalgaon on 15.02.2018.
- III. Writ petition is disposed of accordingly. Rule made absolute in the above terms.
- IV. Pending civil applications are also disposed of.

12. In so far as the writ petition No. 4028 of 2003 is concerned, the same is filed challenging the order dated 10.4.2003 passed by the Member, Industrial Court, Jalgaon in complaint (ULP) No. 1388 of 1999, thereby holding that the respondent Sangh is not engaged in unfair labour practice. Since, the writ petition No. 1690 of 2003, challenging the main grievance of the petitioner-complainant is disposed of and the matter is remanded back to the Industrial Court for deciding the same afresh, this writ petition is disposed of with liberty to the petitioner to raise his grievance again after the decision of the Industrial Court, if needed. The writ petition No. 4028 of 2003 is accordingly disposed of. Rule discharged.

13. Pending civil applications are also disposed of.

(V. K. JADHAV, J.)

rlj/