

IN THE HIGH COURT OF BOMBAY AT GOA**CIVIL APPLICATION (REVIEW) NO. 26 OF 2018
IN
WRIT PETITION NO. 1011 OF 2017**

Manuel D'Cruz,
Major in age, married,
H. No.198,
Bogmalo, Goa.

... Petitioner

V e r s u s

M/s. Bogmallo Beach Resort,
Bogmallo,
Mormugoa, Goa- 403806.

... Respondent.

Coram:- C. V. BHADANG, J.
Date:- 27th August 2018.

Petitioner in Person.

Adv. M.S. Bandodkar with Adv. P. Bandodkar for Respondent.

Oral Order:

Heard the applicant in person and Mr. Bandodkar, the learned counsel appearing for the respondent. Perused record.

2. This is an application for review of the order dated 8/3/2018 passed by this Court in W.P. No.1011/2017. By the said order, the writ petition filed by the applicant challenging the judgment and award dated 17/8/2015 passed by

the Labour Court dismissing the reference on the ground that the petitioner is not a workman within the meaning of section 2(s) of the Industrial Disputes Act 1947 has been dismissed.

3 The applicant, who appears in person has brought to my notice the documents at page no.10 and 11 in order to submit that they do not bear the signatures of the applicant as a financial controller. In so far as the document at page no.12 is concerned, also it is contended that it bears the signature of one Desmond Machado as the financial controller. The applicant, however, does not dispute that in so far as the purchase order at page no.13 of the compilation is concerned, the same bears the signature of the applicant. There is also a document at page no.14 dated 5/7/2018 where the 'petty cash disbursement' was approved by the applicant as a financial controller.

4. The only contention raised on behalf of the applicant is that although he was initially working as a financial controller, he was subsequently demoted as a Peon in the Accounts department. This Court has taken note of the said contention in the order under review and has found that the applicant has failed to produce on record any letter showing that the applicant was demoted as a Peon. A perusal of the present application for review would show that in para 10 of the application, the applicant claims that there was a

letter dated 21/8/2008 issued by Mr. Valigno Dias demoting the applicant as a Peon and the said letter was handed over to the applicant . If that be so, nothing prevented the applicant from producing the said letter. It is now sought to be contended that the applicant was not allowed access to the office where the said letter was kept by the applicant and as such he could not produce the same. This explanation in my considered view is forth coming for the first time. There are several other circumstances which are noticed in the order dated 8/3/2018 which would clearly go to show that the applicant cannot be a 'workman', within the meaning of section 2(s) of the Industrial Disputes Act. For instance the applicant was admittedly reporting to General Manager. As an Accounts Manager the applicant was responsible to take care of all confidential papers and used to interact with the Managing Director Mr. Mittal, who was signing bills which used to come for his approval as the Managing Director. Not only that he was also signing the Form No.16-A about the deduction of tax at source as an authorized signatory of the respondent and was also sanctioning leave of the employees. He was responsible for monitoring, controlling, recording sales and salaries and expenses of the respondent and budgeting of the finance. In fact the applicant in categorical terms had admitted that he was working in an administrative, supervisory capacity. In such circumstances, I do not find that there is any error apparent on the face of the record in the order dated 17/8/2015. The

application is thus without any merit and is accordingly dismissed.

C. V. BHADANG, J.

Ap/-