

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 1011 OF 2017

MANUEL D'CRUZ.,

... Petitioner

Versus

BOGMALLO BEACH RESORT.,

... Respondent

Shri Shailesh Redkar, Advocate under Legal Aid Scheme for the petitioner.

Shri. M. S. Bandodkar and Shri P. Bandodkar, Advocates for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 8th March 2018

P.C.

The challenge in this petition is to the judgment and award dated 17/08/2015, passed by the Labour Court, dismissing the reference raised by the petitioner on the ground that the petitioner is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

2. I have heard Shri Redkar, the learned Counsel for the petitioner and Shri Bandekar, the learned Counsel for the respondent.

3. Indisputably, the petitioner was appointed as an Accounts Manager on 17/10/2007 and the services of the petitioner came

to be terminated with effect from 02/02/2009, which led the petitioner to raise industrial dispute. It has clearly come on record that the petitioner was appointed as a Financial Controller, but was designated as Accounts Manager. He admitted that the duties of the Financial Controller and the Accounts Manager were same. The petitioner was admittedly reporting to the General Manager. It has further come on record that Store Section, Purchase Section, Recovery Section, F & B store of the respondent were coming under the Accounts Department. The petitioner further admitted that as Accounts Manager, he was responsible to take care of all the confidential papers and used to interact with the Managing Director Mr. Mittal. He had sent several mails to the Managing Director as Accounts Manager in connection with the finance and other work. He had also signed debit vouchers, which used to come for his approval as a Financial Controller, which he has signed. Not only that he had also signed Form No.16-A about the deduction of Tax at source under Section 203 of Income Tax Act as an authorised signatory of the respondent. He was also sanctioning leave of the employees and he was responsible for monitoring, controlling, recording sales and salaries and expenses of the respondent. The petitioner was also forecasting the budgeting of the finance and was reporting to the General Manager pertaining to cash planning and review of cash position on monthly basis. Not only that the petitioner, in categorical terms, admitted that he was

working in managerial, administrative and supervisory capacity. The Tribunal, considering all these circumstances, has held and to my mind rightly so, that the petitioner cannot be a workman within the meaning of Section 2(s) of the Act.

4. It is contended by Shri Redkar, the learned Counsel for the petitioner that some time prior to the petitioner being placed under suspension, he was designated as a Peon.

5. In the first place, the petitioner could neither produce any such communication before the Labour Court nor any such letter is produced in this petition. That apart, it cannot be accepted that a person working as Accounts Manager would be designated as a Peon. Be that as it may, the fact remains that the petitioner has been unable to produce any letter to establish that at the time when he was placed under suspension, he was working as a Peon. In such circumstances, no exception can be taken to the finding as recorded by the Labour Court. The impugned Award does not suffer from any infirmity, so as to require interference. The petition is without any merit and is accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.