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

WRIT PETITION NO. 2979 OF 2006

J.P. Fernandes ...Petitioner
Vs.
National Textile Corporation (S.M.) Ltd. ...Respondent

Ms.Karuna Yadav I/b. N.M. Ganguli for Petitioner.
Mr.Avinash K. Jalisatgi with Amol B. Desai for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 29 JUNE 2018

ORAL JUDGMENT :

This petition challenges an order passed by the Industrial Court at Mumbai on a complaint of unfair labour practice filed by the Petitioner herein.

2 The Petitioner had joined the predecessor of the Respondent – Gold Mohur Mills Ltd. (since taken over by the Central Government through National Textile Corporation, who is the Respondent) as a spinning apprentice on 1 March 1967. After a couple of promotions as Department Assistant, Junior Assistant and Senior Assistant, on 1 January 1992, he was promoted as Super Senior Assistant in the spinning department of the Respondent. After take over of Gold Mohur Mills Ltd. by NTC, the Petitioner became an employee of NTC. He served with the NTC till he attained the age of 58 years. Around that time, the Respondent issued a memo to him concerning his impending retirement on superannuation on 22 February 2003, on which day he was to complete the age of 58 years. The Respondent relied on its circular dated 9 October 2000 rolling back the retirement age of its employees, who were not

governed by Model Standing Orders, from 60 to 58 years. The Petitioner's case was that he was not liable to retire at the age of 58 years in accordance with the circular; being an employee as defined in Section 3(13) of the Bombay Industrial Relations Act (“BIR Act”), he was governed by Model Standing Orders and his retirement age was 60 years. He, accordingly, filed a complaint of unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Industrial Court, in its impugned order, held that going by the nature of duties performed by the Petitioner, he was not an employee within the meaning of Section 3(13) of the BIR Act. The primary reason cited by the court was that he was employed in a supervisory capacity drawing basic pay (excluding allowances) exceeding Rs.1000/- (as then applicable).

3 The matter really is in a narrow compass. It is not in dispute that the Petitioner's case hinges on simply whether or not he falls within the definition of an employee under Section 3(13) of the BIR Act. It is not in dispute that he was employed to do skilled or unskilled work for hire or reward in the Respondent industry. It is also not in dispute that his basic pay excluding allowances exceeded Rs.1000/-. What is, however, claimed is that since he was employed primarily in a supervisory capacity, he comes within the first exclusion, i.e. Clause (i) provided in Sub-section (13) of Section 3 of the BIR Act. As for the nature of duties performed by the Petitioner, there is again no dispute that his duties were the following:

> “1) Read the log book and allot work to the fitters, namely,
>
> a. Break down of machine if any.

b. Any changes to be done on the machines as per the production.

c. Cleaning of machines to be done as per schedule laid down.

d. Preventive maintenance programmes to be done, like grinding of carding wires, buffing of costs, mounting of cards with new wires / patch work, etc.

e. Check the break down machines, and find out the requirements, of fitters such as spares and if they require the help of engineering department, to do the job likes welding, drilling, turning etc. and perform and inform Engineering Department accordingly.

f. After the break down are attended cleaning and setting done to check randomly to see if they are done properly or not.

2. Find out the requirements of spares from the fitters, and jobbers and inform, spg.masters, about the same and on his instructions, write the indents for the same, and take spg. masters signature, and sent to stores.

3. Write issue passes for new materials received and for issuing spares, from stock as per requirements of fitters and got the issues pass signed by spg.master.

4. Inspect the new materials and inform spg.master whether suitable or not.

5. Give spg.master any other information required by him.

6. Inform spg.master, if any, maintenance, fitter staff require leave and get the same written by clerks for signature or spg.master."

Even a cursory look at these duties makes it clear that they do not make out a case of primary employment in a supervisory capacity.

4 Mr.Jalisatgi, learned Counsel for the Respondent, lays stress on the very first of the Petitioner's duties, which is to read the log book and “allot work to the fitters”. Learned Counsel submits that this is typically a supervisory duty. The work to be allotted refers to machine break downs, changes, cleaning, preventive maintenance and checking post attendance for break down. As is very obvious, this duty involves inspecting the machines by referring to a log book, which notes the various conditions of the machine, and depending on the particular condition to be attended, entrusting the work to a fitter. In other works, the supervisory assistant merely has to go by a certain protocol, find out the condition for which assistance is required and allot the work to a particular fitter who does the particular work. That is no supervisory work. As observed by a Division Bench of our court in the case of **Bombay Dyeing & Manufacturing Company Ltd. vs. R.A. Bidoo[1],** supervision as properly understood “does not extend to supervision of plant or machine”. A person may check whether the machine is working properly or not, but that does not by any stretch of imagination make him a supervisor. He is merely finding out whether the machine is in a working condition and if it is not, see to it that it is put in working condition. Supervision, as the Court felicitously put it, is “supervision over men and not over machines”. The focus of the inquiry is to find out whether the particular employee had supervisory powers over his subordinates. Noticing the condition of the machine and allotting work to workmen depending on such condition, is not exercising supervisory control over men.

1 **Bom.C.R. 1989(2) 367**

5 Another instance of so-called supervisory control, which Mr.Jalisatgi could point out on the basis of the admitted list of the Petitioner's duties, is his ability to recommend leave for maintenance or fitter staff. Even here, the Petitioner's duty is merely to see that when leave is applied for, a proper requisition is made in writing through a clerk and inform the spinning master about such leave. It is really the spinning master, who exercises supervisory control in the matter of grant or denial of leave. A super-senior assistant, such as the Petitioner, merely forwards a communication by accepting an oral requisition from maintenance or fitter staff and putting the same in writing through a clerk for the signature of the spinning master. Once again, this is no supervision.

6 The impugned order of the Industrial Court is, accordingly, not supported by evidence on record. It is such as no reasonable person duly instructed in law could have arrived at and accordingly, merits interference in the writ jurisdiction of this court.

7 Mr.Jalisatgi refers to the case of **Vithal Bakula Kokate vs. Podar Mills Unit of National Textile Corporation Ltd.**[2] in support of his submission that a Super Senior Assistant such as the Petitioner herein was treated as discharging the duties of a manager/supervisor. Firstly, it is futile to compare nomenclatures of designations to find similarities. Similarities, if at all, are to be found in nature of duties actually performed. In **Vithal Bakula Kokate,** the concerned employee was in-charge of the department; a host of staff-members of different designations, some of whom were supervisory staff, were working under him. He was the punishing authority for the employees working under him. As against all

2 **2010 I CLR 1053**

this evidence brought out by the management, nothing was brought on record by the employee to defeat the management's contentions regarding the nature of his duties. He even declined to cross-examine the management's witness on the point. Concurrent findings were accordingly rendered by the Labour Court and the industrial court on his status, namely, not being an employee within the meaning of Section 3(13) of the BIR Act. Our court refused to interfere with these findings. These facts are clearly distinguishable from the facts of our case.

8 Rule is, accordingly, made absolute and the writ petition is allowed. Since by now the Petitioner has already superannuated, even going by the age of superannuation of 60 years, the Respondent is directed to pay two years' wages to the Petitioner, that is to say, between 22 February 2003 to 22 February 2005. The complaint of the Petitioner under Item 9 of Schedule IV of the MRTU and PULP Act is allowed. Since the amount has been due and improperly denied to the Petitioner, the Respondent shall pay interest at the rate of 6% per annum from the due date till payment or realisation.

(S.C. GUPTE, J.)