

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1175 of 2002

Marico Industries Ltd.,
I-10, MIDC Area, Ajanta Road,
Jalgaon, through its
Works Manager Shri Pankaj Agarwal.

... Petitioner

Vs.

Ravindra Avdhut Dashputre,
resident of 213, Baliram Peth,
Jalgaon.

... Respondent

Advocate for the Petitioner : Shri B. B. Yenge.
Advocate for the Respondent : Shri V. Y. Patil.

CORAM : RAVINDRA V. GHUGE, J.
DATED : MAY 9, 2019

ORAL JUDGMENT :-

1. The petitioner industry is aggrieved by the judgment and order dated 1.9.1999, delivered by the Labour Court, allowing Complaint (ULP) No. 56 of 1996 filed by the respondent and directing the petitioner to pay lumpsum compensation of Rs.2,43,000/- in lieu of reinstatement, continuity and full back wages. The prayer for reinstatement with continuity and back wages was specifically rejected. The petitioner is also aggrieved by the judgment and order dated 21.1.2002 delivered by the Industrial Court by which Revision (ULP) No. 845 of 1999 filed by the management, has been rejected.

2. I have heard the learned advocate for the respective sides at length. It is undisputed that the respondent has accepted the view of the Labour Court depriving him of reinstatement with continuity and full back wages. I have gone through the record available, with the assistance of the learned Advocates.

3. The petitioner has primarily raised three grounds for challenging the impugned judgment, as under :-

(a) The respondent was not a workman under section 2(s) of the Industrial Disputes Act, 1947, considering the nature of his duties.

(b) As the employer had lost confidence in the respondent, his service has been dispensed with, without attaching any stigma and without conducting any inquiry, being a manager.

(c) The respondent has withdrawn his entire Provident Fund accumulations and has received his gratuity, thereby precluding him from challenging his removal from service.

4. Learned Advocate for the respondent submits as under :-

(a) Though the respondent was appointed as a Junior Management – Grade-I, he was actually a Stores Assistant and was working in the Stores Department. He was, therefore, a workman under section 2(s).

(b) As no inquiry was conducted against the respondent, when the employer claimed that it had lost confidence in the respondent, the Labour Court has rightly concluded that no inquiry was conducted and hence, the respondent deserves to be reinstated in service. The Industrial Court approved the said conclusion.

(c) Though the respondent has withdrawn his Provident Fund accumulations and has received his gratuity, it would not preclude him from challenging his removal from service.

(d) The respondent has accepted the judgment of the Labour Court and has not preferred a revision petition or a writ petition.

(e) In the alternative, if this Court comes to a conclusion that the respondent is not a workman, and if this Court is inclined to allow the petition, the respondent would request that an equitable order be passed and he be permitted to withdraw at least 50% of the compensation, rather than granting relief to the petitioner by allowing this petition or remitting the matter to the Labour Court for adducing evidence on the exact nature of the duties of respondent, keeping in view that the cause of action had arisen 23 years ago.

5. In the light of the submissions of the learned Advocate for the respondent, the learned Advocate for the petitioner states on instructions, from the H.R. Executive Manager, Shri. Girish Shinde, who is present in the Court, that if the respondent has not withdrawn 50% of

the compensation amount, which liberty was granted to him by this Court, he may be permitted to withdraw 50% of the said amount along with 50% of the accrued interest.

6. I find from the record that the Labour Court has framed an issue as to whether the respondent management could prove that the original complainant is not a workman under Section 2(s) and is not an employee under Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. It has answered the said issue in the negative.

7. Section 2(s) of the Industrial Disputes Act, 1947 reads as under :-

“2(s) : “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person--

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an

officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

8. Section 3(5) of the the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 reads as under :

"3(5) "employee", in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act, and in any other case, means a workman as defined in clause (s) of Section 2 of the Central Act, and a sales promotion employee as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976"

9. The learned Division Bench of this Court relied on catena of judgments in the matter of **Chandrashekhar Chintaman Vaidya Vs. National Organic Chemical 2010 (11) CLR 121** and held that neither the designation of the employee nor the salary structure would decide his status. The nature of the duties performed by the employee and his job profile will have to be considered while deciding whether he was working in the manufacturing activity or whether he was purely working

as clerk or whether he was working as clerk and also exercising managerial functions.

10. Unfortunately, I find from the evidence recorded in these proceedings before the Labour Court that the original complainant simply denied that he was a manager or was a Junior Management Officer Grade-I. It appears that he avoided facing the issue as to whether he is a 'workman' or not, by giving evasive answers as have been recorded by the Labour Court in paragraph 5 of its judgment, which runs into 17 pages. I, therefore, find it appropriate to cull out certain statements recorded from the examination-in-chief, cross-examination of the Original complainant and the testimony of the management witness, in paragraph 5 as under :-

- (a) He admitted that there is no agreement applicable to him except the terms of employment.
- (b) He does not know whether there is any settlement between employees union and the management on 5.5.1994.
- (c) He knows that there is a union by name Marico Kamgar Sangathna.
- (d) He has no proof to show that he was working as an Employee.
- (e) He admitted that, his appointment was Junior Management, Grade – I, as Store Assistant.
- (f) He admitted that he was given authority on 4.5.1995 to sign documents of the company for transfer of goods, which document is

at Exhibit 'C-19'.

- (g) He has no document to show that his power was withdrawn by the company.
- (h) He admitted that he had written a letter for accepting debit note.
- (i) Six goods transfer note-cum-challans, now shown to him, bear his signature.
- (j) Four excise challans bear his signature.
- (k) Nine Invoices-cum-challans, now shown to him, bear his signature.
- (l) Twelve store receipts-cum-purchase and challan, now shown to him, bear his signature.
- (m) Way-slip challans bear his signature.
- (n) Ten delivery challans-cum-gate passes bear his signatures.
- (o) He admitted that, the respondent has filed true documents and not prepared documents.
- (p) He admitted that he does not receive any benefit of the settlement executed between the management and the union.
- (q) He admitted that Exhibit C-27, Exhibit C-29 and Exhibit C-30, are signed by him as Department Officer. He was in-charge of Engineering Stores Department.
- (r) He admitted that his services are not terminated for any mis-conduct.

11. Considering the above analysis of the evidence made by the Labour Court, it is obvious that prima facie, the respondent does not

appear to be a 'workman'. It is, however, equally true that both the parties had not led adequate evidence on the issue of the status of the original complainant. In this backdrop, though I found material before me to conclude that the respondent is not a 'workman', it would have been advantageous to remit the matter back to the Labour Court, permitting both the sides to place on record such evidence, which would indicate the exact nature of duties performed by the original complainant so as to leave no room for doubt as regards the status of the complainant. Since, the respondent has accepted the view of the Labour Court of refusing reinstatement with continuity and back wages, the case could have been remitted for a limited purpose.

12. Learned advocate for the petitioner management submits that normally he would have no objection to be before the Labour Court and lead additional evidence. However, as the matter is almost 24 years old, the management would pray for a 'quietus' in this matter so as to put an end to the litigation. Learned advocate for the respondent original complainant submits that he is not aware whether the complainant has withdrawn 50% of the amount. Remitting the matter back to the Labour Court would increase the rigours of a cardiac patient. Original complainant is now about 55 years of age and is not keeping any contact with the learned advocate. In this peculiar situation, in the interest of justice and to safeguard the interest of the employee, he prays that the

employee be permitted to withdraw 50% of the total amount, inclusive of accrued interest, in the event 50% of the amount has not being already withdrawn, so as to put end to this litigation. He further clarifies that he is not making this statement on instructions, but he is putting forth the said prayer, so that the respondent would at least get 50% of the amount.

13. Having considered the above, even if the respondent employee is not before the Court and cannot make any statement, I deem it appropriate to accept the suggestion of learned advocate for the petitioner management that this litigation deserves to be accorded a 'quietus' as the parties have been litigating for the last 24 years.

14. In view of the above, this petition is partly allowed. The impugned judgments of the Labour Court and the Industrial Court stand modified with the following directions :-

(A) In the event, the original complainant has withdrawn 50% of the amount, as was granted by this Court by order dated 30.8.2002, when interim relief was granted to the management, the said amount need not be repaid by the respondent to the petitioner industry.

(B) If the original complainant has not withdrawn any amount out of the amount of Rs.2,43,000, which has been deposited by the management before the Labour Court at Jalgaon, the management as

well as the original complainant would be entitled to withdraw 50% of the total amount, which means the basic amount of Rs.2,43,000/- and the interest accrued thereon in the last 11 years. For clarity, the whole amount inclusive of accrued interest would be withdrawn in equal proportion by the management as well as by the respondent original complainant.

15. Rule is made partly absolute in the above terms.

(RAVINDRA V. GHUGE, J.)