

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.150 OF 2018

Jalgaon Jilha Prathmik Shikshakanchi
Sahkari Patpedhi Ltd., Parola,
Bori Colony, Parola, District Jalgaon.
Through its Manager
Pravin Jagannath Sonawne,
Age : 42 years, Occupation : Service.

...PETITIONER

-VERSUS-

Pradip Vasant Wagh,
Age : 36 years, Occupation : Service,
R/o Tarkheda, Tal.Pachora,
District Jalgaon.

...RESPONDENT

...
Advocate for the Petitioner : Shri P B Salunke
Advocate for the Respondent : Shri Patil Vijay B.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 08th April, 2019

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the
consent of the parties.

2 The Petitioner-Establishment is aggrieved by the judgment
and order dated 03.05.2017 delivered by the Industrial Court, Jalgaon, by
which, Complaint (ULP) No.100/2015 has been allowed and the

Industrial Court has concluded that the Petitioner has engaged in an unfair labour practice by reverting the Respondent/ Complainant/ Employee to the post of the Clerk. Consequentially, the impugned order of reversion dated 10.08.2015 has been quashed and set aside and the original Complainant has been granted reinstatement on the post of the Divisional Officer with all consequential arrears of pay and allowances.

3 The undisputed factors in this case are as under :-

- (a) The original complainant was working as the Branch Manager/ Divisional Officer.
- (b) He was charged with having committed misappropriation, by misusing his position of the Branch Manager, to the tune of Rs.1,15,000/-.
- (c) He has repaid the entire amount of Rs.1,15,000/- along with interest to the Petitioner Establishment on 04.06.2014.
- (d) On 13.08.2014, he admitted his guilt before the Executive Magistrate.
- (e) The Petitioner relied upon the confessional statement and reverted the Respondent to the post of a Clerk by order dated 10.08.2015.
- (f) The Petitioner did not award the punishment of dismissal from service so as to give the Respondent / Complainant an opportunity to improve himself.

- (g) The complainant preferred Complaint (ULP) No.100/2015 challenging the order of reversion under Items 5, 9, and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "the MRTU & PULP Act, 1971").
- (h) The complainant first joined the Petitioner on 31.03.2003 as a Clerk. Eventually, he was promoted on 13.08.2014 as the Divisional Officer.

4 The Petitioner-Establishment has opposed the complaint filed by the complainant on the ground that he is not a workman under Section 2(s) of the Industrial Disputes Act, 1947 and therefore, his complaint would be untenable in law. An issue was cast to this effect and the Industrial Court concluded that the complainant is a workman. Since the departmental enquiry was not conducted, the Industrial Court permitted the Petitioner to lead evidence. It finally concluded that though the departmental enquiry was not conducted, the reversion of any nature is a punishment and an enquiry could have been conducted by the Petitioner-Establishment. The complaint was, therefore, allowed by the impugned order dated 03.05.2017.

5 The learned counsel for the Respondent/ Complainant has strenuously opposed this petition contending that though his designation

may appear to be of a Branch Manager or Divisional Officer, he was performing clerical work and therefore, would fall within the definition of "workman" under Section 2(s) of the Industrial Disputes Act, 1947. In the alternative, he submits that if this Court is convinced that the complainant is not a workman, liberty may be granted to the Respondent/ Complainant to approach an appropriate forum for challenging the disciplinary action and the time spent by the employee before the Industrial Court and before this Court, may be considered as a good ground for condonation of delay.

6 It is well settled law that a mere designation or salary structure of an employee would not be decisive in considering whether, he is a "workman" under Section 2(s) of the Industrial Disputes Act, 1947 or an "employee" under Section 3(5) of the MRTU & PULP Act, 1971. The nature of duties and the authority exercised by the employee are the most significant and decisive factors. If an employee has an independent charge, has employees reporting to him, has the authority of granting leave or recommending confirmation in service or making adverse remarks, etc., it would be an indication of such an employee being authorized to take decisions for the employer. It is only when he is covered by clause (iv) under Section 2(s) of the Industrial Disputes Act, 1947 that the quantum of his monthly salary could be one of the factors to be considered.

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 The Respondent/ employee, as a complainant before the Industrial Court, was subjected to cross examination. He stated that he has the authority of supervision and direction over the employees, being the Branch Manager. He is responsible for the economic affairs of such branch. One cashier and two clerks were working under him in the branch at Pachora. He was the person, who was authorized to grant or reject their leave applications. His position as a Divisional Officer was higher than the Branch Managers and he was the second senior-most officer in the

hierarchy of the Management. The Chief Manager of the entire Establishment was the only officer above him. He was drawing monthly salary at the rate of Rs.25,000/- to Rs.26,000/-.

9 I find from the impugned judgment that the Industrial Court has not even considered the examination and cross examination of the employee. It only concluded that the designation of a person is immaterial and the nature of work allotted to him would decide whether, he is a workman or not. Without considering the above recorded statements made by the employee in his cross-examination, which clearly indicate that he was occupying the second position in the hierarchy of the Management, he could not be declared to be a workman or "Majdoor" as is commonly understood. The Industrial Court has apparently fallen in a patent error. As such, the impugned judgment based on such conclusions is perverse, erroneous and unsustainable.

10 In view of the above, this Writ Petition is allowed. The impugned judgment of the Industrial Court dated 03.05.2017 is quashed and set aside and Complaint (ULP) No.100/2015 stands dismissed as being untenable in law.

11 Rule is made absolute in the above terms.

12 Since the Respondent/ Complainant desires to assail the order of reversion by resorting to an appropriate remedy as may be permissible in law, he would be at liberty to do so. The time spent by the

Respondent before the Industrial Court from 17.08.2015 till the passing of this order, would be a ground, which would be considered for condonation of delay, if any.

kps

(RAVINDRA V. GHUGE, J.)