

ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 2662 OF 2019**

Bhaskar Suryabhan Nandurkar

.....Petitioner

V/s.

The Commissioner, Solapur Municipal
Corporation and another

.....Respondents

Mr. Suhas S. Inamdar for the Petitioner

Mr. Deendayal Dhanure for respondent nos. 1 & 2

CORAM : NITIN W. SAMBRE, J.**DATE : JUNE 12, 2019.****P.C.**

The petitioner, working as Assistant Engineer with the respondent-corporation preferred complaint ULP No. 10 of 2015 feeling aggrieved by final show cause notice issued to him after domestic inquiry was concluded. In the complaint, it is alleged that respondent-employer has conducted itself in a manner which has resulted in unfair labour practice under item 5, 9, 10 of Schedule IV of Section 28 of The Maharashtra Recognition of Trade Unions and

Prevention of Unfair Labour Practices Act, 1971 (Hereinafter referred to as 'the said Act' for the sake of brevity).

2 A preliminary issue about the status of the petitioner as a workman came to be framed and answered by the order impugned against the petitioner. As such this petition.

3 Learned counsel for the petitioner has placed reliance on the Judgment of this Court delivered by Aurangabad Bench in Writ Petition No. 7012 of 2013 decided on 13/07/2015 so as to substantiate the contention that he falls within the ambit of definition of 'workman' as defined under Section 2(s) of the Industrial Disputes Act. The submissions of the learned counsel for the petitioner are, the petitioner has come out with basic pleadings in the complaint thereby demonstrating the nature of duty carried out, which according to him are non-supervisory and that being so, he is a workman. According to him, he has also placed on record his examination-in-chief wherein he has demonstrated that the very requirement for identifying an employee to be a workman is duly

satisfied. According to him, vide cryptic order, the Member, Industrial Court has held that the petitioner is not a workman and dismissed the complaint. As such, this petition.

4 While countering the aforesaid submissions, the learned counsel for respondent-employer would support the order and submits, the petitioner was employed as an Assistant Engineer, the nature of duties carried out by the petitioner are supervisory in nature. According to him petitioner was entrusted with the duty and authority to look after the property of the Municipal Corporation is sufficient to infer that the petitioner is not a workman.

5 Considered submissions.

6 The petitioner has produced compilation of documents so as to demonstrate nature of duties performed. The petitioner was appointed as an Assistant Engineer on a technical post and was carrying out duties of a surveyor. The duty chart entrusted to the petitioner speaks of a supervision over the property of a Municipal

Corporation and also other supervisory activities.

7 The Industrial Court while dealing with the claim of the petitioner has noticed that the petitioner has not proved the documents so as to establish his claim that he is a workman.

8 The petitioner has invited attention of this Court to the Judgment in the matter of Writ Petition No. 7012 of 2013 in the matter of **Vasant Manaji Kamble Vs. The Chairman and others** decided at Aurangabad Bench on 13/07/2015. The Court at Aurangabad Bench has taken note of the test which can be relied upon for determining whether a person can be termed as a workman under the said Act. Reliance is also placed on the Judgment of **Chandrashekhar Chintaman Vaidya Vs. National Organic Chemical Industries Ltd. [2010 II CLR 121]** particularly para 36 is worth referring to.

“36. The law as to basic test as to facts to be proved for holding a person to be a workman under Section 2(s) of the

Industrial Disputes Act can be said to be settled, and can be summarized as follows:

- (a) The person does menial, ministerial or clerical work.*
- (b) If any of the parts of his duties involves any sort of supervision, which is on the material and not on the men.*
- (c) The predominant nature of duties discharged by the person, i.e., the part of supervisory duties, if any, if not predominant.*
- (d) What is seen to be is not the designation and/or nomenclature, but performance of duties”.*

9 The duty chart produced by the petitioner *prima facie* demonstrates the nature of work performed by the petitioner. The nature of duties in duty chart by no stretch of imagination takes this Court to conclude that petitioner is a workman within the meaning of The Industrial Disputes Act. Petitioner is not carrying out any menial, ministerial or clerical work. He has authority to supervise the working of men, being a surveyor.

10 As such, no case for interference is made out. Petition as such fails, dismissed.

11 Needless to say it shall be open for the petitioner to take recourse to alternate mode questioning the domestic inquiry or any other action initiated against him out of the same before the Competent Forum. Needless to observe that this Court has not examined the case of the petitioner on merit and as such all the contentions are kept open.

[NITIN W. SAMBRE, J.]