

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 13369 OF 2018

The Automotive Research Association of India ... Petitioner

Versus

Pandurang Punja Avhad

... Respondent

.....

Mr. Avinash Jalisatgi a/w Vaibhav Jagdale i/b Amol Desai for the
Petitioner.

Mr. Nitin A. Kulkarni for the Respondent.

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CORAM : M. S. KARNIK, J.

DATE : 25th MARCH, 2019.

P. C.:

1. Rule. Rule made returnable forthwith and heard with
consent of the learned Counsel for the parties, finally.

2. The challenge by the petitioner in this petition filed under
Articles 226 and 227 of the Constitution of India is to the award
dated 23/08/2018 made by the Presiding Officer, First Labour
Court at Pune in Reference (IDA) No.328 of 2010.

3. A reference was sent by the appropriate Government
through the Additional Labour Commissioner for adjudication
over the demand of workman on the issue :

“Whether the services of second party were

illegally terminated by the first party w.e.f. 08.08.2005? If yes, whether second party is entitled to reinstatement with continuity of service, full back wages from the date of termination till actual reinstatement along with consequential benefits?"

4. The respondent was working at the relevant time as a Senior Project Engineer with the petitioner and was drawing salary of Rs.30,269/- per month.

5. Learned Counsel for the petitioner assailing the award of the First Labour Court submits that the respondent, a Senior Project Engineer, is not workman within the meaning of the Industrial disputes Act, 1947 (for short 'Act'). He invited my attention to the findings recorded by the Labour Court, which held thus;

"28. In view of above said arguments advanced by the Ld. Counsels by the parties, it is seen that only designation is not criteria for deciding the nature of duties. The basic and important thing to decide the issues of workman is the dominant nature of duties performed by the concerned employee. In present matter second party has submitted that he was working as a regular employee. First party has filed one application which is showing that he has recommended leave. But this cannot be said as dominant nature of duties. Therefore, second party is workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947."

6. Learned Counsel would invite my attention to several leave applications, more particularly at page Nos. 74, 75, 76, 77, 78 and

79 of the paper-book, recommended/sanctioned by the respondent. Learned Counsel has also invited my attention to page Nos. 81, 82 and 83 of the paper-book. Page 81 is an authorisation by the Deputy Director in favour of the respondent to look after Vehicle Testing Department in absence of Deputy Director. At page 82 of the paper-book it is indicated that the workman attended the seminar held by M/s. Hewlett Packard at Hotel Aurora Towers, Pune on August, 18, 1994. Learned Counsel for the petitioner would submit that despite these materials on record, the Labour Court has observed that the petitioner company has filed only one application showing that respondent has recommended the leave, which, in the opinion of the Lower Court was not sufficient to hold respondent not be a workman.

7. Learned Counsel for the petitioner further invited my attention to the finding in paragraph 29 holding the State Government to be a proper Forum to adjudicate the demands of the workman. While so holding, it is pointed out that the Labour Court has referred to the defence of the company in its written statement before the Central Administrative Tribunal. Learned Counsel for the petitioner inviting my attention to the written statement filed before Central Administrative Tribunal, would submit that no such stand is taken before the Central

Administrative Tribunal. Learned Counsel would submit that the only objection taken before the Tribunal was that the Tribunal does not have jurisdiction to decide the original application as the workman cannot be said to be an employee of the Central Government and that the company is not a department of Central Government nor owned by the Central Government. Even as regards the merits of the matter while holding that the services of the workman are illegally terminated by the company, learned Counsel would submit that virtually no reasons whatsoever are given by the Labour Court. The only reasoning is in paragraph 30, which is cryptic without discussing the materials on record.

8. Per contra, learned Counsel for the respondent, Shri Kulkarni would submit that the Labour Court has upon considering the entire materials on record came to a conclusion that the respondent is a 'workman' within the meaning of the Industrial Disputes Act. He would submit that it is not the designation which is the criteria for deciding the question. The basic and important thing to decide the issue is the dominant nature of duties performed by the concerned employee. He would further submit that the only materials on record are the leave applications. According to him granting leave by itself is not

sufficient to conclude that the respondent is a workman. He would further submit that the respondent was not confronted with the documents which are produced on record during his cross examination and which the company is now seeking to place reliance on. The said documents, cannot therefore be relied upon to decide the issue. He would further submit that only on the basis of one complaint and that too which is against the son of the respondent that the company is alleging loss of confidence against him. According to him, in these circumstances, if the Labour Court holds that the services of respondent are illegally terminated, no error can be found in the findings of the Labour Court. The said findings cannot be said to be perverse so as to warrant interference.

9. Heard learned Counsel for the parties. I have gone through the pleadings, evidence and the order passed by the Labour Court. The Labour Court was correct in observing that only designation is not the criteria for deciding the issue but it is the dominant nature of duties which is the determinative factor to arrive at a proper conclusion.

10. Having said thus, I find that the Labour Court has not given weightage to the materials produced on record to satisfy

this test. There are materials on record in the form of several leave applications sanctioned/recommended by the respondent; documents which would indicate that the respondent was authorised to look after the Vehicle Testing Department in the absence of Deputy Director and the oral evidence. Moreover, it is the respondent's own case that though he was initially working as Technical Assistant, later on he was appointed as Senior Technical Assistant, then as a Project Engineer - and lastly promoted as Senior Project Engineer. The respondent was drawing salary of Rs.30,269/-. Undoubtedly, and as rightly held by the Labour Court, a designation cannot be determinative factor for deciding whether the employee concerned is a workman. Nonetheless, the entire materials on record are to be taken into consideration for arriving at this conclusion. If a specific objection is raised by the company that the respondent is not a workman and having framed an issue as to whether the second party is workman within the meaning of Section 2(s) of the Industrial Disputes Act, the issue has to be decided having regard to all the materials relied upon by the parties and the oral evidence. In the present case, except for stating that one leave application sanctioned/recommended by the respondent is not sufficient to establish respondent is not 'workman', no other

materials or evidence available on record is considered by the Labour Court. The finding on this issue is cryptic and hence, unsustainable. Even, insofar as the issue whether the reference is maintainable, the Labour Court in paragraph 29 has referred to the defence of the company in the written statement before C.A.T. to the effect that State Government is the appropriate Government, however, from the written statement, I find that no such defence has been taken by the company before the C.A.T. In this view of the matter, it is necessary for the Labour Court to address these issues on the basis of the materials on record and after giving proper reasons. The matter therefore needs to be remitted back to the Labour Court.

11. During pendency of this petition, the company was directed to deposit the amount of back wages as per the award of the Labour Court. Accordingly, the company has deposited Rs.60,15,248/- in this Court. Since I am inclined to direct the Lower Court to decide the matter within 3 months, the amount so deposited can be invested subject to final outcome of the Reference instead of refunding it back to the petitioner. Hence the following order.

ORDER

- (i) The impugned order is quashed and set aside. The matter is remitted to the Labour Court for deciding the same afresh on its own merits within a period of three months from today.
- (ii) The Labour Court not to be influenced by any observations made by me in this order or by the observations made in the impugned order.
- (iii) The amount which is already deposited, be invested by the Registry in a fixed deposit if not already invested in any nationalised bank initially for a period of three months, which would be subject to the decision of the Labour Court.
- (iv) The Labour Court would decide all the issues on its own merits. The parties agreed that it is based on the materials and evidence already on record that the Labour Court will arrive at a fresh decision.
- (v) All contentions on merits are kept open.
- (vi) Writ petition is disposed of in above terms. Rule is partly made absolute in above terms with no order as to costs.

(M. S. KARNIK, J.)