

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

WRIT PETITION NO.1873 OF 2018

Shaban Ali Shaikh

... Petitioner

V/s.

The Dy. Commissioner of Labour

Mumbai City and ors.

... Respondents

Mr.Avinash Shamrao Patil for the Petitioner.

Mrs.Shobana Gopal for Respondent Nos.3 and 4.

Mr.Sukanta Karmakar-AGP for the State.

**CORAM : AKIL KURESHI AND
S.J.KATHAWALLA, JJ.**

DATE : JUNE 18, 2019.

P.C.:-

1. Heard learned counsel for the parties for final disposal of the petition.

2. This petition is filed by the petitioner to challenge an order dated 5th July, 2017 passed by the Conciliation Officer under the Industrial Disputes Act, 1947 ("the Act" for short). By such order he treated the conciliation proceedings between the petitioner-employee and the respondents No.3 and 4-employers as closed on the

ground that the petitioner was employed as "Sales Executive" and drawing wages of Rs.40,000/- per month and was therefore, not covered by the definition of the "workman" under Section 2(s) of the Act.

3. The petitioner was employed by the respondents No.3 and 4 and carried the designation of sales executive. His service was terminated from 10th December, 2016. He therefore sought a reference with respect to the legality of his termination. The respondent No.2- Conciliation Officer after holding sessions for conciliation passed the impugned order and treated the conciliation proceedings closed for the reason noted above.

4. Having heard learned Advocate for the parties and having perused the documents on record, we cannot sustain the impugned order. For several reasons, we find that the Conciliation Officer had committed an error. Firstly, it appears that before the Conciliation Officer the employee has not raised any such dispute of the petitioner not being a workman and therefore, the

proceedings are not maintainable. In any case, no such issue was discussed with the petitioner. The proceedings were thus closed on the ground on which the petitioner had no opportunity to make a representation. Further, in terms of the definition of “workman” contained in Section 2(s) of the Act monthly wages is not the only criteria to hold that a particular employee is not a workman. The additional requirement as per clause (iv) of Section 2(s) is that he or she should also be discharging duties in a supervisory capacity. There is neither any material nor any discussion in the impugned order holding that petitioner was discharging duties on supervisory capacity. The Conciliation Officer therefore merely relied on the designation of sales executive and wages of Rs.40,000/- per month.

5. In any case, the scope of a Conciliation Officer would be narrow. He is called upon to ensure the conciliation between the parties failing which he would make a failure report. Even if we accept the stand of the employer that when it is ex-facie clear that the employee

is not a workman, the Conciliation Officer is not obliged to hold the conciliation, no such facts emerge in the present case. The Conciliation Officer has no adjudicatory role.

6. Under the circumstances, the impugned order is set aside. The Conciliation Officer shall revive the proceedings and submit his report be if positive or negative at the end of completion thereof. All contentions of both sides are kept open. It is always open for the employer to agitate before appropriate forum that the petitioner is not a workman or that in any case his termination was by way of retrenchment.

7. The petition is disposed of accordingly.

(S.J.KATHAWALLA, J.)

(AKIL KURESHI, J.)

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