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

REVIEW PETITION NO. 39 OF 2018
IN
WRIT PETITION NO. 2979 OF 2006

National Textile Corporation (S.M.) Ltd. ...Petitioner
Vs.
J.P. Fernandes ...Respondent

Ms.Meena H. Doshi for Petitioner.
Ms.Karuna Yadav i/b. N.M. Ganguli for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 31 JANUARY 2019

P.C. :

This review petition seeks a review of an order passed by this court in the original writ petition. The original writ petition, in which the order under review was passed, was in challenge of an order passed by the Industrial court at Mumbai on the Writ Petitioner's complaint of unfair labour practice.

2 The writ petitioner was an employee of Gold Mohur Mills Ltd. He joined as a spinning apprentice and after a couple of promotions, was promoted as a Super Senior Assistant in the spinning department. After taking over of Gold Mohur Mills by the Respondent National Textile Corporation Ltd. (S.M.) ('NTC'), the Petitioner became an employee of NTC. He served with NTC till the age of 58 years. At the age of 58 years, he was supposed to be superannuated in accordance with a circular of NTC by which the retirement of its employees, who were not governed by Model

Standing Orders, was rolled back from 60 to 58 years. The Petitioner's case was that he being an employee as defined in Sub-section 13 of Section 3 of the Bombay Industrial Relations Act ('BIR Act'), he was governed by Model Standing Orders and his retirement age was 60 years. He, accordingly, filed a complaint of unfair labour practice under Item 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ('MRTU & PULP Act'). The complaint was rejected by the Industrial Court for the primary reason that the Petitioner was employed in a supervisory capacity drawing basic pay (excluding allowances) exceeding Rs.1000/- as the ceiling limit was then applicable. The only submission before this court in the writ petition on behalf of the Respondent NTC was that the Petitioner was employed primarily in a supervisory capacity and accordingly, he came within the first exclusion, i.e. Clause (i) of Sub-Section (13) of Section 3 of the BIR Act, and accordingly, was not covered by the definition of an 'employee' under Section 3(13). After hearing learned Counsel for the Respondent on the nature of the Petitioner's duties and the supervisory control purportedly exercised by him, this court held that there was nothing to show that the duties discharged by the Petitioner in his capacity as Super Senior Assistant were duties of a manager or supervisor. The Respondent NTC had placed reliance at the hearing before this court on the case of **Vithal Bakula Kokate vs. Podar Mills Unit of National Textile Corporation Ltd.**[1] on the question of nature of the Petitioner's duties. This court found that the facts of **Vithal Kokate** were clearly distinguishable from the facts of our case. This court, accordingly, made the rule absolute and allowed the writ petition. Since by then, the Petitioner had already superannuated, even going by the age of superannuation of the Petitioner, the Respondent was

1 **2010 I CLR 1053**

directed to pay two years wages along with interest at the rate of 6% per annum from the due date till payment or realisation.

3 Ms.Doshi, learned Counsel for the original Respondent, who is the Review Petitioner before this court, submits that one important aspect of the matter, which has weighed with the Industrial Court while rejecting the original Petitioner's complaint, concerns the Petitioner's status as NTC grade employee. Learned Counsel submits that the management had carried out an exercise of fitment of willing employees of Gold Mohur Mills in NTC pay scales together with NTC service conditions when the mills were nationalised. It is submitted that the Petitioner, in the present case, had accepted his fitment in NTC pay scales with NTC service conditions. It is submitted that rolling back of the age of superannuation in case of these employees could be effected unilaterally, that is to say, without any consensus as between NTC and the concerned employee for such rolling back. Learned Counsel relies on a judgment of a Division Bench of our court in the case of **National Textile Corporation Ltd. vs. Union of India**[2] as also a decision of our court in the case of **C.R. Dhuri vs. National Textile Corporation (M.N.) Ltd.**[3] Relying on these judgments, it is submitted that having accepted the package of fitment in NTC scales, it was not open to the Writ Petitioner to claim superannuation age benefits under Model Standing Orders outside NTC service conditions. It is submitted that as he had accepted fitment in NTC scales, his superannuation age could be rolled back as in the case of others in NTC grade. Learned Counsel submits that this aspect of the matter was placed before the Industrial Court and discussed in the order impugned in the writ petition.

2 **2003 II CLR 619**
3 **Writ Petition No.2360/2002 dated 17.8.2006**

4 Whilst there seems to be some substance in what is being submitted by learned Counsel for the Review Petitioner, it is apparent that none of these submissions was placed before this court when the writ petition was argued and decided on 29 June 2018. As the order under review makes it amply clear, the only matter contested before this court was the nature of duties performed by the original petitioner and whether he thereby qualified as a person employed primarily in a supervisory capacity and thus came within the exclusion of clause (i) of Sub-section (13) of Section 3 of the BIR Act. The Petitioner's so called fitment in NTC grade and the issue of unilateral rolling back of superannuation age were not debated before this court and thus, did not form part of the order under review.

5 The jurisdiction of this court to review its own orders is limited to the grounds included in Order 47 Rule 1 of the Civil Procedure Code or its analogous principles. Any application for review must show that the order needs to be reviewed on account of disclosure of some new and important matter or evidence, which, after exercise of due diligence, was not within the knowledge of the party seeking review or could not be produced by him at the time when the order was made or on account of some mistake or error apparent on the face of record or for any other sufficient reason. It is only when either of these ingredients is made out, that this court reviews its own orders. This review jurisdiction does not extend for considering new arguments, which were not advanced when the order under review was passed. The Petitioner's acceptance of fitment in NTC scales and his submission to NTC's terms and conditions are questions of fact. It was for the Respondent NTC to make submissions at the hearing of the writ petition on these issues for sustaining the order of the Industrial

Court impugned in the writ petition. If the Respondent chose not to make any submissions and restricted itself to a particular aspect of the matter, it is not now permissible to it to come back to the court and seek a review of the original order on the basis of those submissions. If we were to permit this, we would be opening floodgates of litigation on impermissible grounds.

6 Accordingly, there is no merit in the review petition. The review petition is dismissed.

7 It must, however, be made clear that the original Petitioner's case is decided, as I have explained above, only on the question of whether or not he was mainly exercising managerial or supervisory duties and not on the ground whether or not, as someone claimed to have accepted the fitment of NTC scales, he was entitled to the benefit of standing orders. In that sense, this judgment cannot be cited as a precedent on this latter issue .

(S.C. GUPTE, J.)