

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3201 OF 2019

(STAR CIRCLIPS AND ENGINEERING LTD...VS.. SOMA RAGHUNATH WANI & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri R.B.Puranik, Advocate for Petitioners.
Shri M.V.Mohokar, Advocate for Respondent No.1.

CORAM : Z.A.HAQ, J.

DATED : JULY 03, 2019.

Heard.

2. The employer takes exception to the order passed by the subordinate Courts concurrently rejecting the objection raised on behalf of the employer to the maintainability of the complaint filed by the respondent-employee, on the ground that the respondent is not an employee within the meaning of Section 3(13) of the Maharashtra Industrial Relations Act, 1946 and Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The contention of the employer, as reflected from paragraph No.2 of the application which was filed before the Labour Court, is that though the respondent-employee was earlier working as Electrician, subsequently, w.e.f. 1st May 2011 he was promoted as Senior Supervisor and had authority to exercise full supervisory powers, control and authority over number of persons working under him in the department. The employer examined one witness i.e. Manager working with it and the employee has also examined himself. After examining the documents placed by the parties on record and assessing the evidence, both the Courts have

concurrently held that the employer has not been able to show that the respondent-employee had been working exclusively as Supervisor. It is recorded that though the respondent-employee had been intermittently doing the work of Supervisor, he continued to work as Electrician also.

3. The learned Advocate for the respondent/employee has pointed out paragraph No.8 of Schedule-I of the Industrial Employment Standing Orders at Exh.46 to urge that the Standing Orders are applicable to all workmen employed in the establishment to do clerical or supervisory work and workman means the workman employed in the establishment to do clerical or supervisory work. Relying on the above provision, it is submitted that the respondent-employee will be covered by the definition of 'workman' and the subordinate Courts have rightly answered the issue in favour of the respondent-employee.

4. The subordinate Courts have relied on the judgment given by this Court in the case of *S.A.Sarang Vs. W.G.Forge & A.I. Ltd. and Ors.*, reported in **1996(1) LLJ 67** and has found that as the charge-sheet is given to the respondent/ employee as per the Model Standing Orders, the petitioner-employer is estopped from contending that the respondent will not fall in the category of 'employee' and the complaint filed by him is not maintainable.

The learned Advocate for the petitioner-employer submitted that the conclusions of this Court in the judgment given in the case of *S.A.Sarang* (supra) was in the facts of that case and the Court relied on the factum of issuance of charge-sheet under Model Standing Orders as the evidence on record

was not sufficient to ascertain whether the complainant in that case would fall in the category of employer and issuance of charge-sheet as per Model Standing Orders will not make any difference and in that case it cannot be said that the complainant will fall in the category of employee. The judgment given in the case of *S.A.Sarang* (supra) is tried to be distinguished on the ground that in that case consistently and continuously the employer had proposed action against the complainant in that case on the footing that he is covered by the Model Standing Orders, but, in the present case, it is a solitary instance.

The submission made by the learned Advocate for the employer to distinguish the judgment given in the case of *S.A.Sarang* (supra) cannot be accepted. There is nothing on record to show that the employer is accepting that the charge-sheet is issued as per the Model Standing Orders to the respondent-employee inadvertently or by mistake. Obviously, such stand cannot be taken by the employer, otherwise charge-sheet itself will go.

5. Be that as it may, in the present case, I find that the petitioner-employer has not been able to prove that the respondent-employee had been exclusively doing the supervisory, administrative or managerial work and therefore, cannot be termed as “employee” within the meaning of Section 3(13) of the Maharashtra Industrial Relations Act, 1946 and Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. I find that the subordinate Courts have properly appreciated the evidence on record. It cannot be said that the subordinate Courts have committed any illegality or

perversity or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

As the complaint is pending since 2012, the Labour Court is directed to decide it till 30th November 2019.

JUDGE

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