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

WRIT PETITION NO. 11049 OF 2017

C. Mohan son of T. Chinnasamy ..Petitioner

vs.

Union of India – Railway Board & ors. ..Respondents

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Mr. Rahul Walia a/w. Mr. Brijesh Nittekar for petitioner.

Mr. Arsh Misra i/b. M.V. Kini & Co. for respondent No.2.

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**CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.**

DATE : 20 FEBRUARY 2020

P.C.:-

By this Petition, the Petitioner has challenged the orders dated 31 March, 2017 and 3 August 2017 and chargesheet dated 31 December 2015. The Petitioner was working with the Respondent - Konkan Railway and his services were brought to an end on 31 March 2017. His appeal has been dismissed by the Appellate Authority.

2. A preliminary objection is taken by the Respondents that the Petitioner being a workman is governed by the Industrial Disputes Act and has the remedy of industrial adjudication and that the Petitioner had earlier approached and got relief from the Industrial Tribunal on the ground that he is a workman.

3. We note that earlier a reference was made to the Central Government Industrial Tribunal in respect of the Petitioner wherein the order was passed by the Tribunal in favour of the Petitioner on 10 November 2008. These proceedings were conducted on the basis that the Petitioner is a workman.

4. The learned counsel for the Petitioner submitted that this preliminary objection is incorrect and relied upon the definition of 'Workman' in the Industrial Disputes Act. He submitted that the gross salary of the Petitioner is Rs.10,000/- and therefore, he does not fall under the definition of Workman. The contention of the learned counsel for the Petitioner that the earlier order has been implemented and merely because such an order is passed, does not mean that the Petitioner is a workman. It is contended that the present is a new cause of action.

5. This submission cannot be accepted. Upon the Petitioner's contention, the High Court earlier directed the Government of India to make a reference to the Industrial Tribunal. In those proceedings, as can be seen from the order of the Tribunal, all parties accepted the Petitioner as 'Workman'. The Tribunal issued directions in favour of the Petitioner. It is not pointed out to us that the Petitioner's status has undergone a change and the only argument advanced is that for a new cause of action the Petitioner can take a different stand. Once the Petitioner had, at his instance,

got a reference made to the Industrial Tribunal and the reference was decided on the basis he is a workman, we are not inclined at the behest of the Petitioner to take different view to hold the Petitioner is not a 'Workman'.

6. The Petitioner being a workman, and which fact is accepted by the Respondents also, the Petitioner has the remedy to approach under the industrial adjudication. Therefore, we are not inclined to exercise our equity jurisdiction. If the Petitioner approaches and avails of the statutory remedy available, all his contentions on merits which are raised in this Petition are kept open.

7. The Writ Petition is accordingly, disposed of.

(M.S.KARNIK, J.)

(NITIN JAMDAR, J.)

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