

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

WRIT PETITION NO.1523 OF 2019

Konark Synthetic Limited	...	Petitioner
Versus		
Mr. Premchand Pasi	...	Respondent

.....

Mr. Mahesh Shukla i/b Mr. Niraj Prajapati for the Petitioner.
Mr. Ashik Ali for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATE : 11 FEBRUARY 2020

P.C. :

. Heard learned Counsel for the parties.

2 This writ petition challenges an order passed by the Industrial Court at Mumbai on a revision application. By the impugned order, the Industrial Court quashed and set aside a dismissal order passed by the Labour Court at Mumbai on a complaint of unfair labour practice filed by the Respondent herein and remanded the complaint to the Labour Court for a fresh hearing. The parties were allowed to carry out amendment of their pleadings and tender evidence in support of their respective cases. The Labour Court had essentially dismissed the complaint on the basis that the complainant had not given details of the nature of his work or filed any document concerning the same; and that it was not possible to come to a conclusion that he was a

workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and, accordingly, an employee under Section 3(5) of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Industrial Court held that on the facts of the case, the burden was basically on the Petitioner herein (original respondent before the Labour Court) to prove that the complainant was discharging duties of managerial and supervisory cadre and therefore, the court had no jurisdiction to try and decide the complaint. The court, particularly, noted that it was not in dispute that the complainant was working as a Sales Accountant in the establishment of the Respondent-company. If the Respondent-company were to challenge the status of the complainant as a workman and jurisdiction of the Labour Court to decide the complaint on that basis, it was for it to prove the said contentions. The Industrial Court, in the light of this discussion allowed both parties to carry out the requisite amendment in their pleadings and also tender evidence in support of their respective cases. No infirmity can be found with the impugned order of the Industrial court. All rights and contentions of the parties are kept open by it, to be agitated before the Labour Court, when it hears the complaint on remand.

3 Accordingly, there is no merit in the writ petition. The petition is dismissed.

4 It is made clear that the remand is for deciding the issue as to whether or not the complainant is an employee within the meaning of

sub-section (5) of Section 3 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and other issues in the complaint.

(S.C. GUPTE, J.)

Rajesh V.
Chittewan

Digitally signed by
Rajesh V. Chittewan
Date: 2020.02.17
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