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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2193 OF 2019

Nandkumar Ratnakar Jadhav

...Petitioner

vs

Eveready Industries India Ltd.

...Respondent

.....

Mr. P.M. Mokashi, for the Petitioner.

Mr. V.P. Vaidya, for the Respondent.

.....

CORAM : S.C. GUPTE, J.

DATED: 22 JANUARY, 2020

P.C. :

. Heard learned Counsel for the parties.

2. This writ petition challenges an order passed by the Labour Court at Mumbai on an application made by the Petitioner herein under Section 33C(2) of the Industrial Disputes Act, 1947. The application was for recovery of alleged legal dues of the Petitioner. One of the main defences of the Respondent herein (original opponent) was that the applicant was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act. It was the case of the Respondent that the Petitioner was working in a supervisory, administrative and managerial capacity with the Respondent. It was also the Respondent's case that there was no pre-existing or recognised right to recover the dues and, in the premises, the complaint under Section 33C(2) was not maintainable. On both these counts, the learned Labour Court Judge held in favour of

the Respondent and rejected the Petitioner's application.

3. The Respondent had produced before the Labour Court voluminous evidence in support of its case that the Petitioner was doing supervisory, administrative and managerial work with the Respondent. The Petitioner, who was originally appointed as an accounts clerk, was later promoted (promotion order dated 26 March 1987) as Accounts Analyst (Exempt Staff); his last promotion was in M-5 Cadre, which was a managerial cadre. There were documents to indicate that the Petitioner had received UCIL Literature, which included Managers' Resource Manual, Professional Managers' Guide and Methods Engineering for Supervisors. There was documentary evidence to show that his salary was to be reviewed from time to time at the discretion of the company and, likewise, his promotion was subject to performance. The documents also showed that the Petitioner was not to associate himself with raising of collective demands and was not entitled to overtime allowance and was transferable to any location in India. The documents also showed that the post of the Petitioner was upgraded from Cost Analyst M-4 level to M-5 level for the purpose of looking after matters of taxation and General Manager of the Respondent company had executed a power of attorney in his favour. It also emerged from the documents placed on record that the Petitioner had submitted declaration forms to the Central Sales Tax Department as Executive Commercial of the Respondent by signing on the same. There were documents to show that the work actually carried on by the Petitioner was first of Accounts Analyst and later as Executive Commercial M-5 Grade. The documents also showed that there were annual performance

appraisals for the Petitioner, during the time he worked as Executive Commercial in M-5 Grade. Besides this documentary evidence, the court also noted the Petitioner's admissions in his cross-examination. The Petitioner had admitted before the court that there was a workers' union in the opponent company, of which he was not a member; so also, salaries of workmen were increased and revised from time to time after settlements between the workmen's union and the opponent company but that his salary was not accordingly subjected to any increase or revision. Having regard to all this documentary and oral evidence, the labour court came to a conclusion that the Petitioner was doing supervisory, administrative and managerial work with the Respondent and that he was not a 'workman' as defined under Section 2(s) of the Industrial Disputes Act.

4. On the other issue, namely, the Petitioner's claim for the purported dues, the labour court noted that the Petitioner himself had admitted in his cross-examination that he was not taking medical leave. He, however, claimed that leave was not so taken on account of mental stress or pressure or humiliation by reason of his transfer to the commercial office of the Respondent at Mumbai. The court noted that he had not made any complaint to the head office at Calcutta or the branch office at Mumbai regarding any mental stress or pressure or humiliation, as alleged by him. The court also noted the Petitioner's admission that LTA was paid to him as per the grade, on which he was working. The court noted that insurance premium for the Petitioner was also paid by the Respondent and there was no complaint as regards the same on the part of the Petitioner. The court, in the premises, came to

the conclusion that there was no case of any outstanding legal dues. The court also noted that after attaining the age of superannuation, the Petitioner had retired from service and had signed documents confirming receipt of full and final provident fund and gratuity dues. The court lastly noted that there was no adjudication of benefits legally payable to the Petitioner, which could be computed and awarded in an application under Section 33C(2) of the Industrial Disputes Act.

5. Neither of the two conclusions of the labour court can be termed as either perverse or unreasonable. Both conclusions are supported by some evidence on record; the court has taken into account all relevant and germane circumstances and materials for arriving at these conclusions; and it has not considered any irrelevant or non-germane material or circumstance for the same. There is, accordingly, no merit for scrutiny of the impugned order within the writ jurisdiction of this Court.

6. The petition is, accordingly, dismissed.

(S.C. GUPTE, J.)

**Smita
Gonsalves**

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