

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 3165/2017

Balkrishna s/o Mahadeo Gharat,
 Aged about 65 years, Occ. Nil.
 R/o. Flat No.1, Ground Floor,
 Ragini Apartment, Vishal Nagar,
 Pimpalgaon Road, Yavatmal-445 001.

..... **PETITIONER**

...VERSUS...

Indian Oil Corporation Ltd.
 Western Region, Indian Oil Bhawan,
 BKC Plot No.C-33, C-Block,
 Bandra-Kurla Complex, Bandra(E),
 Mumbai-400 051.
 through its Senior Employees Relation Manager.

..... **RESPONDENT**

 Shri P.R.Puri, Advocate for the petitioner.
 Shri Vilas D.Raut, for the respondent.

CORAM : A.S.CHANDURKAR, J.

DATE ON WHICH THE ARGUMENTS WERE HEARD : 12/12/2019

DATE ON WHICH THE ORDER WAS PASSED : 10/01/2020

ORDER

The challenge raised in this writ petition is to the order passed by the learned Presiding Officer of the Central Government Industrial Tribunal, Nagpur, dated 12.02.2015 by which it has been held that the petitioner was not a workman under the provisions of Section 2 (s) of the Industrial Disputes Act, 1947 (for short, 'the said Act') and hence the reference as made was not maintainable.

2. The facts relevant for adjudicating the challenge as raised is that the petitioner claims to have been appointed on the post of Tele Printer/Telex Operator with the respondent-Indian Oil Corporation Ltd. on 16.04.1981. The petitioner was then promoted in 1988 on the post of Section Officer, Grade-II. Thereafter in 1992 promoted as Section Officer, Grade-I. During the course of service, an enquiry was held against him by issuing a charge-sheet on 04.11.1993. Pursuant to the said enquiry, the services of the petitioner were terminated on 16.12.1994. The departmental appeal filed by the petitioner was dismissed in 1995 and thereafter the petitioner sought to raise an industrial dispute. Accordingly the said dispute was referred to the Central Government Industrial Tribunal for adjudication. As per the Schedule to the reference the questions to be considered were, whether the action of the respondent in dismissing the services of the petitioner was without giving due opportunity to the petitioner to defend his case and secondly whether the petitioner was a workman or an officer for the purposes of being granted any relief. Though initially all issues arising in the reference were directed to be decided, an order was however passed by the Tribunal by virtue of which the preliminary issue with regard to the status of the petitioner of being workman was taken up for consideration. It was the case of the petitioner that considering the nature of duties being done by him which were purely clerical in nature he was a workman and therefore the Tribunal was competent to answer the reference. On the other hand according to the employer the petitioner was an officer after his promotion in the year 1992 and therefore as he was working in a supervisory capacity, he was not a workman. After considering the evidence on record, the learned Presiding Officer by the order dated 12.02.2015 held that the petitioner was infact an officer with the Corporation and

that his nature of duties indicated that he was not a workman under Section 2 (s) of the said Act. The reference was accordingly disposed of as not being maintainable. Being aggrieved the said order has been challenged by the petitioner.

3. Shri P.R.Puri, learned counsel for the petitioner submitted that the learned Presiding Officer committed an error in holding the petitioner to be an officer and not a workman. It was his submission that merely on the basis of an order of promotion dated 11.05.1993 by which the petitioner was directed to attend a training programme for Grade-IV workman, it was held that the petitioner was an officer. Referring to the nature of duties being done by the petitioner, it was submitted that the same could not be said to be of supervisory nature and that those duties indicated that the petitioner was only acting on the basis of directions issued to him by his superiors. Though it was the case of the respondent that the petitioner was doing duties assigned to him by his superiors, the said officers had not been examined by the respondent. On the contrary, the Section officer who was examined by the respondent clearly admitted that he was not aware about the actual job being performed by the petitioner. Since the petitioner was required to do the work of preparing pay orders along with the work of maintenance, it was clear that the nature of duties assigned to him were clearly clerical and operational in nature. The learned counsel therefore submitted that the Tribunal erred in recording a finding that the petitioner was not a workman. Placing reliance on the decision in ***Seth Jeejeebhoy Dadabhoy Charity Funds & Ors. Vs. Farokh Noshir Dadachanji 2005 III CLR 110***, it was submitted that the burden to prove that the petitioner was not a workman was on the employer and that burden had not been discharged. He also

referred to the decisions in *R.M.Nerlekar Vs. The Chief Commercial Supdt., Central Rly., Bombay, 1991 II CLR 789* and *Arvind Ramdas Valke Vs. Ispat Industries Ltd. & Ors. 2008 III CLR 1003* in that regard. He further submitted that such piecemeal adjudication of only the preliminary issue was unwarranted in view of the decisions in *D.P.Maheshwari Vs. Delhi Administration & Ors. 1983 II LLJ 425*, *National Council for Cement and Building Materials Vs. State of Haryana & Ors. 1996 II CLR 234* and *Cipla Ltd. and others Vs. Ripu Daman Bhanot and another (1999) 4 SCC 188*. It was thus submitted that the impugned order was liable to be set aside and the reference ought to have been answered on merits.

4. Shri V.D.Raut, learned counsel for the respondent on the other hand supported the impugned order. According to him, there was sufficient material on record that was considered by the Tribunal to hold that in view of the duties done by the petitioner, he was an officer and not a workman under Section 2 (s) of the said Act. The order of promotion issued to the petitioner promoting him as Section Officer Grade-I clearly indicated that he was treated as an officer. While being so promoted, he was required to attend a training programme so as to guide the Grade-IV workman as appointed officer Grade-I. Referring to other material on record including the material receipt note at Exhibit M-III, it was submitted that the petitioner had signed the same as Officer In-charge in the location. The nature of duties being done by the petitioner were clearly supervisory in nature and one of the duties of the petitioner was to assign work to his subordinates and he was also In-charge of those subordinates. After his promotion the petitioner was made a member of the Officers' Association which also indicated his status as an officer.

Placing reliance on the decisions in *Union Carbide (India) Ltd. Vs. Ramesh Kumbla & Ors. 1999 I CLR 193*, *Karnataka Bank Ltd. Vs. Sunita B.Vatsaraj 2008 (1) Bom. C R 891* and *Dhruba Kumar Changkakoti Vs. Travel Corporation of India Ltd. and Ors. 2008 I LLJ 94*, it was submitted that the impugned order did not call for any interference.

5. I have heard the learned counsel for the parties at length and I have also gone through the records of the case. For the purposes of examining the status of the petitioner the relevant date would be the date on which the cause of action for raising an industrial dispute had arisen. It is seen from the record that in the year 1992 the petitioner was promoted as Section Officer Grade-I. Pursuant to a departmental enquiry held, the order of termination was issued on 16.12.1994. Thus when the services of the petitioner were terminated, he was holding the post of Section Officer-I Grade-A in the pay-scale of Rs.2500-4820. The nature of duties being done by the petitioner is not in dispute. In the statement of claim as filed by the petitioner he has stated that the nature of his duties included booking of hotel accommodation and preparing pay orders for making payment to the hotels, making arrangements for lunch/dinner for official meetings/conferences, taking care of attendance of the peons, sweepers and making arrangements of deploying them to the various departments in the office premises, arranging stationery for various departments and also preparing pay orders for such stationery. The petitioner examined himself before the Tribunal and reiterated the aforesaid nature of his duties. In his cross-examination he admitted the document at Exhibit M-III which was a receipt that was signed by him as the Officer In-charge after

receiving material as supplied. He also admitted that after his promotion as Section Officer Grade-I, he was made member of the Indian Oil Officers' Association. His defence representative in the enquiry proceedings was also a member of that Association. He further admitted that for workmen working in the Corporation departmental enquiries were held under Certified Standing Orders. He also admitted that he had counter signed the bill dated 14.10.1992 at Exhibit M-V. He then admitted that the works entrusted to him as Section Officer Grade-I were not being entrusted to any clerk or class-IV employee. He was performing the works entrusted to him by senior officers and the work was being done through the employees working under him.

For the aforesaid evidence of the petitioner, the nature of the work being done by him becomes clear. It reveals that the petitioner was assigned various responsibilities and subject to his acceptance, the bills as submitted were being cleared. The officers senior to him were entrusting work to him and he was getting the same done through the employees working under him. In the light of his clear admission that the work entrusted to him was not being entrusted to any other clerk or Class-IV employee, the status of the petitioner becomes clear. The fact that the petitioner was made a member of the Officers' Association corroborates the fact the petitioner was also treated as an Officer. He was signing various receipts also in that capacity. It is found that the aforesaid material has rightly been taken into consideration by the learned Presiding Officer for recording a finding that the petitioner could not be treated as a workman under Section 2(s) of the said Act. Considering the definition of the term 'workman' it becomes clear that the said term does not include any person who is employed in a supervisory capacity. The nature

of duties attached to the office and by reason of powers vested in him, the tasks assigned to him were mainly of a managerial nature.

6. Though the witness examined by the respondent admitted that he was not in employment during the period when the petitioner was in service as he had joined services in November 1999 and that he was deposing from the records, the said factor would not be very relevant when the evidence of the petitioner and his cross-examination is considered. It is found that the material on record in that regard is sufficient to justify the conclusion recorded by the learned Presiding Officer. It cannot be said that merely on the basis of the order of promotion the learned Presiding Officer has held that the petitioner was an officer. The order of promotion dated 11.05.1993 also substantiates the said conclusion as that order requires the petitioner to attend a training programme with a view to guide other subordinates.

7. There cannot be any dispute with regard to the ratio of the decisions relied upon by the learned counsel for the petitioner. It is true that though the initial burden to prove the nature of duties is on the employer, in the present case there is no dispute between the parties with regard to the nature of duties being rendered by the petitioner. Since both the parties led evidence, the question of burden of proof would not be very relevant and it would therefore be necessary to consider the overall material on record. After considering that material on record, the finding recorded by the learned Presiding Officer that the petitioner was not a workman does not warrant interference. Insofar as adjudication of the preliminary issue by the Tribunal is concerned, the earlier orders passed in the same proceedings have been

accepted by the parties and they have joined issue for deciding the said preliminary issue. This aspect was also not questioned by the petitioner in the earlier writ petition filed by him being Writ Petition No.3033/2011. The petitioner has accepted the order of remand passed by this Court for the purposes of consideration of the preliminary issue. Hence after that issue has been answered in the light of the evidence led by the parties, it is not now open for the petitioner to contend that all issues ought to have been decided by the Tribunal.

8. It is therefore found that the impugned order does not suffer from any jurisdictional error. There is no case made out to interfere in writ jurisdiction. The writ petition is accordingly dismissed leaving the parties to bear their own costs.

JUDGE

Andurkar..