

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**WRIT PETITION NO.9542 OF 2018
WITH
CIVIL APPLICATION NO.5644 OF 2019
IN WP/9542/2018**

Nagraj Janardan Patil,
Age 66 years, Occupation Farmer,
R/o 182, Bhikamchand Jain Nagar,
Jalgaon.

...Petitioner

VERSUS

Jalgaon Jilha Sahakari Dudh Utpadak
Sangh Limited, Jalgaon.

...Respondent

.....
Advocate for Petitioner : Party in person
Senior Counsel for Respondent : Mr. V. D. Hon i/b
Mr. A. V. Hon
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
10-06-2021**

**Date of Pronouncing the Order :
08-07-2021**

ORDER :

1. Present petitioner/ party-in-person is challenging the Judgment and order passed in Revision Application (ULP) No.177 of 2001 by learned Member Industrial Court, Jalgaon on 25-04-2018 whereby the said revision application filed by the present respondent came to be allowed

and the Judgment and order dated 17-05-2001 on issue No.7 in Complaint (ULP) No.42 of 1999 passed by Labour Court, Jalgaon came to be set aside.

2. Before turning to the submissions, the checkered history is required to be noted. It is not in dispute that the present petitioner was in the employment of the respondent Sangh as Chief Security Officer since 1988. Prior to that, he had retired from Indian Air Force. Further, the administration of the respondent Sangh was taken over by National Dairy Development Board on 11-09-1995. The further fact is that the charge-sheet was served on the petitioner on 03-07-1996 which was signed by the Administrator Mr A. K. Josef. It is also not in dispute that there are Model Standing Orders in view of the Bombay Industrial Employment (Standing Order) Rules, 1959. Thereafter on 18-12-1999 the services of the present petitioner came to be terminated. The present petitioner had filed said complaint (ULP) No.42 of 1999 under Item No.1 of Schedule IV of Maharashtra Recognition OF Trade Union AND Prevention OF Unfair Labour Practice Act, 1971 (hereinafter referred to as, 'MRTU and PULP Act" for the sake of brevity). The further fact that is required to be noted is that though the issues were framed, issue No.7, "Does the respondent prove that the complainant is not an employee within the meaning of Section 3 (5)

of the MRTU and PULP Act and a workman within the meaning of Section 2 (s) of the Industrial Disputes Act ?," was treated as an important issue and evidence was adduced by the respondent. After considering the evidence, the learned Labour Court had given the finding to the said preliminary issue No.7 as "Not Proved". That order was challenged by respondent Sangh in Revision Application (ULP) No.177 of 2001. The learned Industrial Tribunal on 10-12-2001, on hearing both sides, confirmed findings on the said issue No.7 dated 17-05-2001. Thereafter, the respondent Sangh had approached this Court by filing Writ Petition No.453 of 2002. This Court set aside the order passed by the Industrial Court in the said Revision Application No.177 of 2001 and relegated the matter for deciding the revision afresh to the extent of issue No.7. This Court had specifically directed the Industrial Court to decide the said revision in the light of Judgment of this Court in the case of *Sadanand Ramesh Samsi vs. Kirloskar Cummins Limited, reported in 2002 (4) Mh.L.J. 8041*, by giving an opportunity to both sides to make their submissions on the said issue. Further, after hearing both sides, the learned Member of the Industrial Court, Jalgaon by Judgment and order dated 01-03-2003, allowed the Revision Application (ULP) No.177 of 2001, thereby the findings given by the learned Labour Court on issue No.7 were set aside and the complaint filed by the present petitioner before the Labour Court was dismissed.

Thereafter, the present petitioner filed two writ petitions before this Court along with the civil applications i.e. Writ Petition No.1690 of 2003 and 4028 of 2003. This Court by order dated 30-01-2018 partly allowed the writ petitions. The Judgment and order dated 01-03-2003 passed by the learned Member Industrial Court, Jalgaon in the revision was quashed and set aside and the matter was remitted back to the concerned Court once again. Again it was specifically directed that the revision be heard afresh and be decided on its own merits after giving an opportunity of being heard to both sides. Accordingly once again the parties were heard by the learned Member of the Industrial Court, Jalgaon and by Judgment and order dated 25-04-2018 the said revision came to be allowed as aforesaid by quashing the Judgment and order dated 17-05-2001 passed by the learned Labour Court on issue No.7. Once again the petitioner party-in-person is before this Court challenging the said Judgment and order.

3. Heard the learned party-in-person and learned Senior Counsel Mr. V. D. Hon instructed by learned Advocate Mr. A. V. Hon.

4. The party-in-person has taken this Court through the documents which he has produced along with the petition and also the various case laws which he has referred. As aforesaid, most of the facts are admitted and the limited point on which the deliberations were required

were, as to whether the respondent Sangh who had raised the preliminary objection regarding the status of the petitioner as "employee or workman" has been correctly decided by both the Courts below or not. At the cost of repetition, it is to be stated that respondent Sangh had taken objection by filing a written statement regarding the tenability of the complaint and status of the complainant / present petitioner as an employee. If we consider the wordings used in issue No.7 then it can be seen that the burden was on respondent Sangh to prove the fact. Whether a negative burden can be put on any party to prove a fact is a question, however when the respondent Sangh had come with a specific case that the petitioner complainant was not an employee within the meaning of Section 3 (5) of the MRTU and PULP Act and a workman within the meaning of Section 2 (s) of the Industrial Disputes Act, then it was for the Sangh to prove the same. The party- in-person has vehemently submitted that a false charge-sheet was served on him, giving a concocted story on 03-07-1996 by Mr A. K. Josef, who designated himself as administrator. He submitted that in the said charge sheet an incident, alleged to have taken place on 21-05-2016 was quoted. It was alleged that he i.e. petitioner had abused one Dhondur Shankar Patil. If the charge sheet is considered then it can be seen that the alleged incident had taken place outside the premises of the Sangh. Further, it was also alleged that in

the past also there were incidents when the complainant had abused and assaulted the workers. The charge was framed in view of the Model Standing Orders which are applicable to the 'workers' and, therefore, the Sangh had treated him as a 'worker', but now unnecessary objection has been taken. The learned Labour Court had correctly decided the matter after relying on the decision in *S. A. Sarang vs. W. G. Forge and Allied Industries Ltd. Thane*, reported in 1995-I-CLR-837. The party-in-person has further submitted that in fact, the appointment of Mr. Josef as Administrator is a fraud. Mr. Josef had done illegal activities, so also other office bearers of the Sangh, as well as the National Dairy Development Board were wrongly appointed. Said Mr. A. K. Josef was not delegated with the powers and, therefore, he could not have issued any notice nor he could have terminated the services of the complainant. He has taken this Court through the various replies given by National Dairy Development Board in response to the applications given by the party-in-person under the Right to Information Act. He submitted that the copies of the documents which he had called were not even available with the said Board. Under such circumstance, it cannot be said that the said Board had any kind of control over the Sangh. He has filed various criminal complaints before the Chief Judicial Magistrate, Jalgaon for the various illegal activities done by the accused persons mentioned therein, for gross injustice that

has been done to him. The party-in-person has even tried to contend that the learned Member of the Industrial Court who pronounced the Judgment and order on 25-04-2018 was not authorized as he was repatriated in June 2018 and, therefore, the said Judgment cannot be said to be binding on him. He prayed for setting aside the impugned Judgment by the learned Member of the Industrial Court and restoration of the decision given by the learned Labour Court.

5. Per contra, the learned Senior Counsel submitted that the party-in-person is in habit of making allegations against all those persons who are opposing his moves. He has filed criminal complaints not only against the office bearers of the Sangh but even the Hon'ble Ministers holding the Port Folio of Milk Development of the State of Maharashtra since 1995 till 2010. He has included all the Secretaries to the Government of the said department, Commissioners, Sub-Registrars, Assistant Registrars, Auditors, Police Officers and filed a complaint against about 115 persons before Chief Judicial Magistrate. In present matter, it was remanded twice with a specific direction that the learned Member should decide the preliminary issue afresh. The point before the Court was limited, as to whether there is any such material that was produced to support the contention of the complainant that he is the 'employee or workman'. Only the respondent Sangh had examined

four witnesses. Though the opportunity was given to the complainant/ party-in-person to lead the evidence, he has not examined anybody. The fact which had come on record was that the complainant was serving as Chief Security Officer and he does not dispute that. He also does not dispute that there were about 18 to 20 employees who were working under him. He used to sanction the leave of those persons. So also he used to write confidential reports and supervise the work of those employees. Even he used to give the recommendations when called in respect of grant of increments to the employees under him. Under such circumstance, when he had such supervisory powers, he cannot be said to be a 'workman'. Time and again the respondent Sangh has canvassed before this Court in view of the decision in *Sadanand Ramesh Samsi vs. Kirloskar Cummins Limited, reported in 2002(4) Mh.L.J. 804*, wherein powers under Section 44 of the Industrial Disputes Act were considered, and it was held that, if the decision by the Labour Court is against the record then the Industrial Court can interfere. Merely because in the charge-sheet, wrong mentioning of rules under the Model Standing Rules, the complainant cannot become an 'employee or worker'. Further, the facts of the case in *S. A. Sarang vs. W. G. Forge and Allied Industries Ltd., (Supra)* were different. In view of the fact that in that case several times when the notices were issued, it was stated that the said action has been taken under the

Model Standing Orders. Here only one charge-sheet was given; wherein it was so mentioned that it is under the Model Standing Orders. The illegal activity that was done by the complainant will not go away. Being the officer, he was not supposed to misbehave with the employees within the premises of the Sangh. The learned Member of Industrial Court has correctly decided the issue and a very detailed order taking into consideration all the legal aspects involved in it, has been passed, which requires no interference at all.

6. At the outset, this Court would impress, so also it was impressed on the party-in-person while he was arguing that taking into consideration the scope of the present petition; the criminal complaints those have been filed by him cannot be looked into. The narrow point that is required to be considered here was whether the Sangh i. e. respondent was able to prove that the complainant is not its 'employee' within the provisions aforesaid. What has come on record is that the respondent Sangh had examined four witnesses but no evidence was led in rebuttal by the complainant. Important point further is also required to be taken into consideration is that only on the point that in the charge-sheet dated 03-07-1996 and the show cause notice dated 12-07-1996 it was stated by the respondent Sangh that it is issued as per the Model Standing Rules; the learned Labour Court appears to

have held that he is an 'employee or worker'. It can be seen from the Judgment of the learned Labour Court that he had not discussed the oral evidence adduced by the respondent Sangh. In spite of that at one place, it has been observed by the learned Labour Court that, "it appears from the oral and documentary evidence and citations cited by the respondent that the complainant is not an employee within the meaning of Section 3 (5) of the M.R.T.U. and P.U.L.P. Act and a workman within the meaning of Section 2 (s) of the Industrial Disputes Act". However, as per the decision in *S. A. Sarang vs. W.G.Forge and Allied Industries Ltd. (Supra)*, it appears that he proceeded to hold that the respondent Sangh failed to prove issue No.7. This appears to be a contrary decision, as compared to his own findings. Only on the basis of some citations, a Court is not required to come to a final conclusion but the Court is required to consider what is the ratio laid down in the said citation and in order to arrive at that ratio what were the facts before the said Court should be considered. If the facts are similar, the law involved in the case is similar; then only the said decision/ratio would be applicable, otherwise the concerned Court now dealing with the dispute, has to come to its own conclusion on the basis of evidence adduced. It has been rightly considered by the learned Member of Industrial Court now in the impugned order that the ratio in *S. A. Sarang vs. W.G.Forge and Allied Industries Ltd. (Supra)* will not be

applicable to the facts before this Court on two grounds. One is that the present party-in-person petitioner had not led any evidence in rebuttal, and another fact is that, only once in the charge-sheet and in show cause notice the Model Standing Order has been referred; whereas in case of *S. A. Sarang vs. W.G.Forge and Allied Industries Ltd. (Supra)* it was repeated act. Further in *S. A. Sarang vs. W.G.Forge and Allied Industries Ltd. (Supra)* case, in paragraph No.5 it has been observed that,

"The evidence on record is equivocal and does not clinchingly indicate the nature of the work done by the petitioner. All documents produced by the first respondent could also be explained away and did not definitely show that the petitioner was employed as Supervisor. The oral evidence is equally ambiguous."

This was the basis coupled with the repeated acts of the employer to invoke the Model Standing Orders that had led the Court in that case to come to the conclusion that in that case the petitioner was an 'employee and/or workman'. At the cost of repetition once again when it is not in dispute that the petitioner complainant was serving as a Chief Security Officer since beginning i.e. since the appointment and was controlling about 18 to 20 employees under him by an act of sanctioning leave, writing their confidential reports, gives recommendations for their increments and allotting them the work in

different shifts etc., he cannot be termed as 'employee/ workman'. The revision has been correctly decided. All the legal points involved are correctly discussed and, therefore, there is no question of invoking the Constitutional powers of this Court either under Article 226 and/or under Article 227 of the Constitution of India to set aside the said Judgment and order dated 25-04-2018. Another fact will have to be mentioned that on the day the Judgment was pronounced, the said member was very much holding the post and his repatriation order passed by this Court on 14-06-2018 will not render the said Judgment as illegal. It appears that these subsequent allegations are also part of the attitude of the petitioner. It can also be seen that he has made allegations against the learned Advocate for respondent stating that his Vakalatnama is not properly signed. In the past also he has made allegations against the then Advocates who were representing the respondent Sangh.

7. Before parting, one more fact is required to be mentioned here that when this Court was hearing the submissions by the petitioner/ party-in-person, even it was suggested as to how his approach should be while making submissions, since he has no legal background and even the legal aid was offered, however, the party-in-person flatly refused to take any legal aid and, therefore, this Court was constrained

to hear the submissions whatever were made, apart from that all the points are dealt with by this Court.

8. With these observations, as case is not made out for invoking the constitutional powers of this Court, the writ petition stands dismissed. Civil Application No.5644 of 2019 stands disposed of in view of the dismissal of the writ petition.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.