

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2604 OF 2020

BABAN SADASHIVRAO KHEDKAR
VERSUS
MANAGING DIRECTOR JAIBHAWANI SAHAKARI SAKHAR KARKHANA LTD
SHIVAJINAGAR

Mr.U.M.Indani, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : FEBRUARY 23, 2021

PER COURT :

1. By this petition, the petitioner has challenged the order dated 25/11/2019 passed by the learned Labour Court-2, Aurangabad vide which, the issue as to 'whether the petitioner is a workman', has been framed in Application (IDA) No.13/2017.

2. I have considered the strenuous submissions of the learned Advocate for the petitioner and have gone through the petition paper book with his assistance.

3. There is no dispute that the respondent/Management relied on its pleadings in it's written statement and requested the Trial Court to frame an issue as to whether the petitioner/applicant, who was working as a

Deputy Chief Chemist, would be a workman u/s 2(s) of the I.D.Act, 1947. The petitioner claims that he had earlier joined as a Clerk, then became a Chemist and finally was promoted as Deputy Chief Chemist from 12/10/2010 till he retired on 01/01/2012.

4. The learned Advocate for the petitioner may be justified in having a grievance against the impugned order by which the issue of workman was framed when final arguments in the matter had commenced. He would have been justified in his grievance if the Management had not taken up the said issue in its written statement filed in response to the application of the petitioner u/s 33(C)(2). However, the Management has specifically raised this objection in the very opening paragraph of the written statement and, therefore, it was the duty of the Court to frame the issue as to whether the applicant/employee is a workman, in the light of Section 33(C)(2), which reads as under :-

“Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months.]”

5. Since the status mentioned in Section 33(C)(2) is of “workman”, the issue should have been cast when all other issues were framed. Nevertheless, as the error has been cured though belatedly, I do not find that the impugned order could be faulted as it would be mandatory for the Labour Court to decide whether the petitioner is a workman and its jurisdiction could be exercised only if the issue is answered in the affirmative. As this issue touches the jurisdictional aspect, I do not find that the impugned order could be faulted.

6. Since the petitioner was a retired employee working as Deputy Chief Chemist, interest of justice would be sub served if the Labour Court is directed to take up the issue alongwith all other issues and decide the same expeditiously.

7. The learned Advocate for the petitioner fairly states that he would complete the recording of his additional evidence on the additional issue within 45 days and it would be appropriate to issue directions to expedite the matter.

8. As such, this petition is disposed off.

9. The learned Labour Court-2 would record the evidence of the petitioner/applicant on the additional issue till 20/04/2021 and the

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Management would lead its additional evidence, if so advised, on the additional issue before 30/06/2021. Thereafter, the Labour Court would endeavour to decide Application (IDA) No.14/2017, on or before 31/08/2021.

(RAVINDRA V. GHUGE, J.)