

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 222 OF 2021

M/s. Procter and Gamble Health Limited
(Formerly known as Merck Ltd.
A company registered
under the Companies Act 1956,
having its Registered Office at
Plot No.11/1, Marwasodo, Usgaon,
Ponda, Goa 403 407
represented by its Authorised Representative
Shri Mr. Vaibhav Korgaonkar,
Aged 43 years, residing at Vasco Goa.

... Petitioner.

V/s.

Smt. Anupa Desai
major of age,
rep. by General Secretary,
Gomantak Mazdoor Sangh,
G-5, Macedo Apartments,
Tisk, Ponda Goa 403 401

... Respondent.

Mr. G. K. Sardessai with Ms. Madhuri Rao, Advocates for the
Petitioner.

Mr. Shivraj Gaonkar, Advocate for the Respondent.

CORAM: M. S. SONAK, J

Reserved on: 29.06.2021

Pronounced on: 05.07.2021

JUDGMENT:

Heard Mr. G. K. Sardesai with Ms. Madhuri Rao, learned Counsel for the petitioner, and Mr. Shivraj Gaonkar, learned Counsel for the respondents.

2. Rule. At the request of and with the consent of the learned Counsel for the parties, the Rule is made returnable forthwith.

3. The challenge in this petition is to the award (part-I) dated 28.02.2020 made by the Industrial Tribunal and Labour Court, Government of Goa at Panaji (Tribunal) in Reference No. IT/25/2014 rejecting the petitioner's (employer's) preliminary objections to the maintainability of the reference. The employer had urged that the respondent is not a workman under Section 2(s) of the Industrial Disputes Act, 1947 (said Act) and in any case, the Gomantak Mazdoor Sangh, of which the respondent was a member, was incompetent to raise the industrial dispute relating to her termination.

4 Mr. Sardesai, the learned Counsel for the petitioner, at the very outset and upon a query of this Court, made it clear that

the employer was not pressing the issue of alleged incompetency of the Gomantak Mazdoor Sangh to raise the industrial dispute on behalf of the respondent-employee. Mr. Sardesai, therefore, made no submissions on this aspect. Even otherwise, having regard to the provisions of Section 2(A) of the said Act, as was noted by the Tribunal in paragraphs 18 and 19 of the impugned award, there is no case made out to question the reference on the said ground.

5. Mr. Sardesai, however, submits that there is perversity in the findings recorded by the Tribunal that the respondent is indeed a workman under Section 2(s) of the said Act. He submits that the award is riddled with errors apparent on the fact of record, failure to consider the entire material on record holistically, non-application of mind and the application of incorrect legal tests. For all these reasons, Mr. Sardesai submits that the award is liable to be set aside and the reference, declared incompetent.

6. Mr. Sardesai submits that the Tribunal has misconstrued the legal position and focused excessively on the services of the respondent in the Stores Department, hardly about 4 months before the date of the termination of her services. He submits that such an approach is contrary to the law laid down by

this Court in *A. B. Manore v/s. W. N. C. Ltd*¹ . He submits that the Tribunal has virtually ignored the nature and character of the services rendered by the respondent before such Transfer or for that matter before being employed with the present employer. Mr. Sardesai submits that all this material, which has escaped consideration of the Tribunal, was vital to the consideration of the actual nature and character of the respondent's employment with the employer. Mr. Sardesai submits that if all such material were to be considered by the Tribunal, then, the conclusion that the respondent was a Supervisor would be inescapable.

7. Mr. Sardesai submits that the employer, upon leave being granted by the Tribunal to amend its pleadings, has placed on record that the respondent, post her termination has also been appointed to a managerial or supervisory position with M/s Choksi Laboratories Ltd. He submits that such pleadings are admitted by the respondent. He submits that the Tribunal was, therefore, duty-bound to consider this aspect of the matter before rejecting the employer's contention that the respondent was discharging predominantly supervisory functions before her termination.

1 1994 (69) FLR 761 (Bom.)

8. Mr. Sardesai submits that the Tribunal has applied an incorrect test for determining whether or not the respondent was a workman under Section 2(s) of the said Act. He submits that the correct test would involve taking a holistic view of the material on record and determining the predominant functions of the respondent. He submits that merely because the respondent may have had no power to grant or sanction leave or to initiate disciplinary proceedings against any other employees, does not, in any case, militate against the predominantly supervisory functions of the respondent-employee. He submits that the approach of the Tribunal is contrary to the correct approach pointed out in *Standard Chartered Bank v/s. Vandana Joshi*.²

9. Mr. Sardesai submits that the approach of the Tribunal is also contrary to the law laid down by this Court in *G. S. Khairkar v/s. M/s. Camlin Limited*,³ in which, it is held that the burden is always upon the employee to establish that she is indeed a workman under Section 2(s) of the said Act and unless the employee leads cogent evidence to displace the evidence led by the employer, the Tribunal, cannot conclude that the employee must have been a workman under Section 2(s) of the said Act.

² 2010 (1) CLR 163 Bom.

³ 1998 (2) Bom C.R. 487

10. Though, Mr. Sardesai, had circulated a compilation comprising several judgments, reference was made and reliance was placed only on the aforesaid judgments by him, in support of his contentions. True, several of the decisions related to the powers of this Court to go into the part-I award, instead of postponing adjudication of such challenge once the Tribunal disposes of the entire matter before it.

11. Mr. Sardesai, for all the aforesaid reasons, submitted that the impugned award may be set aside and the reference before the Tribunal dismissed on the ground that the respondent is not a workman under Section 2(s) of the said Act and, therefore, an industrial dispute at her behest, was incompetent.

12. Mr. Shivraj Gaonkar, the learned Counsel for the respondent defended the award based upon the reasoning reflected therein. He countered the submissions of Mr. Sardesai and submitted that the nature of duties discharged by the employee at the time of her termination is most relevant. He submitted that the nature of employment even before the respondent was employed with the present employer or for that matter the nature of employment with some different employer post the high-handed

termination, is quite irrelevant. He submitted that in any case, there is no evidence whatsoever on the nature of such employment, assuming without admitting that the nature of such employment is relevant.

13. Mr. Gaonkar submitted that the respondent was transferred to the Stores Department with effect from 16.09.2013 and was assigned an entirely “new role”, which expression is specifically employed in the transfer letter dated 13.09.2013. He pointed out that, to this letter, was annexed the job description as well as the job responsibilities that were expected from the respondent. He submits that none of the specified jobs, even remotely suggest any supervisory functions that the respondent was allegedly required to discharge. He submits that from the job description provided by the employer, it is more than evident that the respondent was not discharging any supervisory functions whatsoever. Mr. Gaonkar submits that the respondent has led evidence in this matter and the oral, as well as documentary evidence on record, completely sustain the clear and categorical findings recorded by the Tribunal in the impugned award. He submits that the correct legal tests have been adopted by the Tribunal and no case of any perversity or misdirection in law has been made out by the employer.

14. Mr. Gaonkar submits that the evidence on record has been considered holistically and the material on record supports the finding of fact recorded by the Tribunal. He submits that in the absence of any case of perversity or misdirection in law, this Court, in the exercise of its extraordinary and supervisory jurisdiction may not interfere.

15. Mr. Gaonkar relied on *M/s. Sikand & Company v/s. State of Himachal Pradesh & Ors.*⁴ and *C Gupta v/s. Glaxo SmithKline Pharmaceutical Ltd.*⁵ in support of his submissions.

16. Mr. Gaonkar also pointed out that this is a case of high-handed termination of the respondent without holding any inquiry. He submitted that the Tribunal, having regard to the law laid down in *D. P. Maheshwari v/s. Delhi Administration & Ors*⁶ and *National Council for Cement & Building Materials v/s. State of Haryana & Ors.*⁷ was duty-bound to decide all the issues together. He submitted that in any case, this Court, ought not to interfere with the award, which is, even otherwise legal and justified.

4 (2007) SCC Online HP 174

5 (2007) 7 SCC 171

6 (1983) 4 SCC 293

7 (1996) 3 SCC 206

17. The rival contentions now fall for my determination.

18. The respondent-employee in the present case was appointed as “Analytical Chemist” in the Quality Control Department by the employer with effect from 12.04.1996. This was after the respondent satisfactorily completed her training. Sometime in the year 2013, it was alleged that the respondent has made some “false allegations” concerning the functioning of the Quality Control Department. There were some issues of disagreement with Mr. Vijay Tubki, one of the Managers under whose supervision the respondent was said to be functioning. The petitioner has placed on record communication possibly dated 08.07.2013, addressed by the respondent employee to the Personnel Manager of the petitioner (pages 106-110 of the paper book).

19. Thereafter, it is the case of the employer, and even record bears out that the respondent employee was transferred to the Stores Department or rather to the “Stores” vide letter dated 13.09.2013 which is to be found at Exhibit-E page 44 of the paper book. Now, this letter is important because it states that it would be in the best interest and for a congenial working atmosphere if the functions of the respondent employee were *changed*. This letter also states that the respondent employee will have to discharge *a new role*

in the Stores with effect from 16.09.2013. The respondent employee was urged to *hand over her current responsibilities of QA functions* (Quality Assurance functions), to one Mrs. Shriya Shet. This letter, enclosed the new job description of the respondent employee in the Stores by way of an annexure.

20. The letter dated 13.09.2013 is transcribed below for the convenience of reference.

“Ref No: PER/408

Date: 13th Sept. 2013.

Merck Limited

To:

Mrs. Anupa S Dessai,

Emp Code: 5452

Quality Control Department

Subject: Transfer to the Stores

Dear Anupa,

This is with reference to your letter dated 08th July 2013, and subsequent to the discussions you had with me and the HRBP MGF. We take a note of your request for a change of department. I have investigated into the matter and though I have not come across any mitigating circumstances inhibiting your performance I believe that for a congenial working atmosphere it is best if we make a change of function.

Considering your request we are pleased to offer you transfer of your services in the Stores Department. In this new role you will be reporting to Mr. Vijay Mahale with effect from 16th September 2013. We urge you to arrange handover of your current responsibilities of QA function to Mrs. Shriya Shet.

Your job description for the rest of the year is enclosed along with as an Annexure 1.

We wish you all the very best in your new role.

For MERCK LIMITED,

Sd/-

VAIBHAV KORGAKONKAR,

HR BUSINESS PARTNER”

“Annexure 1:

JOB DESCRIPTION

Merck Limited

Name : Anupa Dessai.

Department : Stores.

Reporting To : Mahale Vijay R

Job Responsibility :

- 1. Perform day to day activities of receipts and issues*
- 2. SAP data entries*
- 3. Dispensing of material*
- 4. Filling of documents*
- 5. Recording of day to day cGMP documents*

6. Recording of Dips and tank material

7. Any other responsibilities assigned to you by the reporting manager

Read & Accepted:

Anupa Dessai”

21. Now, there is no dispute between the parties, that post the transfer of the respondent employee to the Stores vide aforesaid letter dated 13.09.2013, the respondent employee started discharging most of the functions indicated in annexure-I. The main dispute is whether any of the functions referred to by the employer in annexure-I to the transfer letter dated 13.09.2013 constitute supervisory functions.

22. Before analyzing the issue as to whether any of the functions or responsibilities assigned to the respondent employee as aforesaid amount to supervisory functions, it is necessary to complete the narration of the sequence of events leading to the institution of the present petition.

23. On 16.11.2013, when admittedly, the respondent employee was working in the Stores, she was issued a warning for her alleged misbehavior. This warning letter states that the respondent employee on 13.11.2013 at around 12:30 AM entered the cabin of Mr. Vaibhav Korgaonkar, HRBP without a prior appointment. When Mr. Korgaonkar enquired about the purpose of the visit, the respondent employee is alleged to have said: *“Mr. Korgaonkar comes under tension looking at you” “i.e. your presence makes HR business partner tensed.”* The warning letter further states that the respondent employee suggested that the purpose of her visit was that her leave card was with the HRBP, even though, such card is maintained by one Mr. Jayprakash. Based upon this conversation, the warning letter which is signed by the General Manager (Works) states that *“Hence, from the above act I am concerned about the provocation and sheer lack of disregard for the Merck value of 'respect' towards your co-workers.”* The warning letter then calls for explanation within 7 days as to why appropriate punishment as deemed fit in the circumstances should not be awarded to the respondent employee. The detailed response of the respondent employee dated 26.11.2013 is on record.

24. On 04.01.2014 the employer terminated the services of the respondent employee by stating that the respondent employee

was working as “Executive” in the Stores Department since 16.09.2013, wherein she had been predominantly performing supervisory duties of dispensing activities in the stores. Such termination was not preceded by any inquiry.

25. In the conciliation proceedings, the employer insisted that the respondent employee was not a workman under Section 2(s) of the said Act and since this was a case of termination simpliciter, there was no question of any industrial dispute under the said Act. The conciliation officer submitted a failure report on 25.06.2014 and by order dated 18.09.2014, the appropriate Government made a reference to the Industrial Tribunal under Section 10(1)(d) of the said Act.

26. The Tribunal, recorded evidence of both the parties, took into account both the oral as well as the documentary evidence and ultimately after almost 6 years from the date of reference has made the impugned award rejecting the preliminary objections raised by the employer. It is this award that is now challenged by the employer by instituting this writ petition.

27. Although, it is not for this Court at this stage, to go into the circumstances of the termination of the respondent employee, reference is made to the aforesaid to only point out that despite the respondent employee suffering her termination in the circumstances referred above, almost 7 years ago, the matter is only at the stage of determining whether the respondent employee is a workman or not under Section 2(s) of the Industrial Disputes Act. This is despite the legislative mandate that industrial matters must be disposed of with utmost dispatch by tribunals and labor courts.

28. It is precisely in the aforesaid context that the Hon'ble Supreme Court in the case of *D. P. Maheshwari* (supra), took cognizance of the unbecoming devices adopted by certain employers to avoid decision of industrial disputes on merits. The Court noticed how the employers would raise various preliminary objections, invite decision on those objections in the first instance, carry the matter to the High Court under Article 226 of the Constitution and to Apex Court under Article 136 of the Constitution and delay a decision of the real dispute for years, sometimes for over a decade. The Hon'ble Apex Court noted that there was a time when it was thought prudent and wise policy to decide preliminary issues first. The Hon'ble Apex Court went on to observe that the time appears to have arrived for a reversal of that policy and that it would be better

that tribunals, particularly those entrusted with the task of adjudicating labor disputes where delay may lead to misery and jeopardize industrial peace, should decide all issues in dispute at the same time without trying some of them as preliminary issues. The Hon'ble Apex Court held that even the High Courts in the exercise of their jurisdiction under Article 226 of the Constitution should not stop proceedings before a Tribunal so that a preliminary issue may be decided by them. The Hon'ble Apex Court further observed that *neither the jurisdiction of the High Court under Article 226 of the Constitution nor the jurisdiction of this Court under Article 136 may be allowed to be exploited by those who can well afford to wait to the detriment of those who can ill afford to wait by dragging the latter from Court to Court for adjudication of peripheral issues, avoiding a decision on issues more vital to them. Article 226 and Article 136 are not meant to be used to break the resistance of workmen in this fashion.*

29. The aforesaid sentiment was reiterated in the ***National Council for Cement & Building Materials*** (supra) where, the Hon'ble Apex Court, after referring to its earlier decisions in ***Cooper Engineering Ltd. V/s. P. P. Munde***⁸ and ***S. K. Verma v/s. Mahesh Chandra And Anr.***⁹ and ***D.P. Maheshwari*** (supra)

⁸ 1975 2 SCC 661

⁹ 1983 4 SCC 214

observed that the Apex Court cannot shut its eyes to the appalling situation created by such preliminary issues which take long years to settle as the decisions of the Tribunal on the preliminary issue are immediately challenged in one or the other forum including the High Court and proceedings in the reference are stayed which continue to lie dormant till the matter relating to the preliminary issue is finally disposed of. In ***National Council for Cement & Building Materials*** (supra), the Tribunal had first agreed to decide the issue as to whether the employer was an “industry” under the said Act as a preliminary issue. However, later on, the Tribunal changed its mind and held that all the issues including this preliminary issue would be decided together. The employer approached the High Court which refused to interfere. The Hon'ble Apex Court held that the High Court rightly refused to intervene and the decision of the High Court is fully in consonance with the law laid down by this Court in its various decisions referred to above.

30. According to me, this is also a matter where the Tribunal should have decided all the issues together rather than piece-meal. Now that the parties insisted upon the adjudication of the preliminary objection in this Court, the learned Counsel for the parties were heard on the issue in great detail. With the assistance of

the learned Counsel for the parties, the material on record was evaluated and even the decisions relied upon by them are proposed to be considered. Normally, in a matter of this nature, it is not for this Court to re-evaluate the material on record as if, this were some appeal. As long as the findings of fact recorded by the Tribunal are borne out by the evidence on record and there is no case of misdirection of law made out, interference is uncalled for. However, since this was a case of a preliminary issue, the learned Counsel for the parties were permitted to go into evidentiary aspect on the record in some detail.

31. Now, in this case, it is difficult to accept Mr. Sardesai's contention that the Tribunal, has focused almost entirely on the duties which the respondent employee was performing at the time of her termination. The Tribunal has taken into account the employer's contention about the earlier functions of the respondent employee. In any case, the earlier functions of the respondent employee, including particularly the evidence that on one occasion she set some question papers or imparted training to two supervisors, is proposed to be considered by this Court in these proceedings.

32. Mr. Sardesai, has himself contended that one or two isolated instances must never be the base for determining the predominant nature of services discharged by an employee. He submits that there has to be an overall consideration. This submission was in the context that the respondent employee in the present case admittedly having no power to either recommend or sanction leave or to initiate any disciplinary proceedings against any employees. Applying the same test, the suggestion that on an occasion, the respondent employee, whilst she was functioning in the QA department had set some question papers or had imparted training to two supervisors, cannot be a reason for holding that the respondent employee was predominantly engaged in carrying out any supervisory functions. Apart from such one or two instances, there is no evidence of supervisory functions worth the name.

33. The decisions in *Standard Chartered Bank* (supra) and in *G. S. Khairkar* (supra) relied upon by Mr. Sardesai precisely lay down that there has to be a holistic consideration of the entire material on record and conclusion one way or the other, cannot be based on some isolated facts and circumstances. Therefore, merely because on one occasion, the respondent employee set some question paper or trained 2 supervisors in the QA department, it cannot be said that the predominant nature of the respondent employee's

duties was supervisory. Besides, the impact of the employer transferring the employee from the QA to Stores cannot be ignored. The transfer was precisely to assign new functions or to function in a new role. The job description in the transferred position was specified by the employer in the transfer letter to rule out any ambiguity on this score. The tribunal has considered the entire material on record holistically and the charge of the application of the incorrect test is not made out.

34. In any case, there is clear evidence that the employer transferred the respondent employee from the QA department to the Stores. The transfer letter dated 13.09.2013 refers to not only the change of department but also the change of functions. The letter refers to a new role being assigned to the respondent employee. Further, the job description of the new role or the change of functions was set out by the employer in its transfer letter dated 13.09.2013, so that, there should be no ambiguity on this count.

35. The respondent employee has deposed in this matter and from the perusal of the deposition, it is quite evident that the respondent employee was discharging only clerical or at the highest technical functions as opposed to any supervisory or managerial functions. It is not the case of the employer that the respondent

employee was discharging any managerial functions though, there is some reference to some executive functions. It is only the case of the employer, as articulated by its learned counsel, that the respondent employee was discharging supervisory functions. The learned counsel was however unable to demonstrate how the job description specified by the employer could amount to supervisory functions.

36. The witnesses on behalf of the employer have also never seriously denied that the respondent employee was discharging the functions referred to in annexure-I to the transfer letter dated 13.09.2013. In fact, it was the case of the employer that the respondent employee was discharging such functions but that such functions were essentially or predominantly supervisory. Mr. Vijay Tubki who was examined as the management witness however deposed that he was not even aware of what functions the respondent employee was discharged in the Stores department. Based upon the evaluation of the oral evidence of the management witnesses as also the documentary evidence produced, no case has been made out to fault the findings of fact recorded by the Tribunal. The findings are well sustained by the documentary as well as oral evidence on record and no case of either perversity or misdirection has at all been made out.

37. In this case, cogent evidence was led by the respondent employee as a result, the onus, shifted upon the employer. In any case, the employer's transfer letter dated 13.09.2013, which specified the job responsibilities assigned to the respondent employee was sufficient for the onus to shift on the employer in the facts of the present case. Now, none of the job responsibilities set out in annexure-I to the transfer letter dated 13.09.2013 refer to any supervisory functions. Mr. Sardesai, only submitted that “dispensing of material” or for that matter “activities of receipts and issues” constitute supervisory duties.

38. Now, dispensing of material based on the requisitions sent by other departments can hardly be regarded as duties of supervisory character. Merely because there were 2-3 helpers in the stores and such helpers also helped the respondent employee for dispensing the material requisitioned, it cannot be said that there was an element of supervision involved in the duties of the respondent employee. Neither was any case made out that the respondent employee was supervising these helpers nor, is there any evidence to show that the respondent employee was indeed supervising these helpers. Similarly, the activities of receipts and issues is also a clerical activity and can hardly be regarded as some supervisory function. Ultimately, if the test as proposed by Mr.

Sardessai itself is to be accepted and the inquiry has to be about the predominant nature of the duties then, the perusal of the job description set out in the transfer letter dated 13.09.2013, is sufficient to conclude that the duties discharged by the respondent employee were predominantly clerical or at the highest technical. There was no element of supervision involved and therefore, there is no case made out to interfere with the finding of the fact recorded by the Tribunal.

39. Mr. Sardessai pointed out certain documents like test reports or some quality assurance reports, etc. which bear the signature of the respondent employee when she was in the QA department. Admittedly, from 16.09.2013, the respondent employee was not in the QA department but was in the Stores. The employer required her to change her functions and to play a new role with effect from 16.09.2013. The employer also specified the nature of duties which was required to perform in this new role. There is no element whatsoever of any supervision involved in this new role in the Stores. The duties of the respondent employee in the Stores were entirely clerical or at the highest technical and not supervisory. Even otherwise the signing of the reports along with others in the previous role was hardly a reason to hold that the predominant character of the employee's functions was supervisory.

40. The ruling in *A. B. Manore* (supra) dealt with the case where the employee was carrying on duties of overall control over several sections had achieved expertise in troubleshooting. It is in this context that this Court observed that the fact that for a few days, here and there if the employee functions in some clerical or technical capacity, that does not change the basic character of his employment. In the said case, there was clear evidence that the employee was working in a supervisory capacity for over 12 years and it was held that merely because on some isolated occasions here and there, the employee may have discharged some clerical or technical functions, that does not detract from his status as supervisor. The facts as borne out in the evidence on record in the present case are not comparable in the decision in *A. B. Manore* (supra). But applying the test laid down in *A. B. Manore* (supra), too much emphasis cannot be laid on the two isolated instances pointed out by Mr. Sardesai. Instead, the entire evidence on record will have to be considered holistically. Such holistic consideration supports the findings recorded by the Tribunal in this matter.

41. Incidentally, in *Standard Chartered Bank* (supra) the employee in question was appointed as “Personnel Financial Consultant”. His job responsibilities or his job role was to achieve allocated business targets, ensuring high-quality customer service,

ensuring external and internal compliance on all branch transactions, handling difficult customer situations, and contributing to the overall achievement of business growth. Even the key responsibilities assigned to this employee have been set out in some detail in paragraph 2 of the decision. Based upon all these factors, this Court concluded that the employee was not a workman. In the present case, applying the very test set out in *Standard Chartered Bank* (supra) and having regard to the job description of the respondent employee, no case is made out to interfere with the finding of fact recorded by the Tribunal that the respondent employee was indeed a workman under Section 2(s) of the said Act.

42. Similarly, in *G. S. Khairkar* (supra), the employee in question was the Assistant Security Supervisor, who was found to be working in the capacity over other security guards. Based upon this factual premise, the employee was held not to be a workman under Section 2(s) of the said Act. The facts in the present case are quite converse.

43. In this case, from the evaluation of the material on record, it is quite apparent that the respondent employee was hardly discharging any supervisory functions. Most of her duties were

technical and clerical. If the main work done is essentially and predominantly clerical and technical, then, the mere fact, that some supervisory duties are also carried out incidentally or as a small fraction of the work undertaken, will not convert the employment of such an employee into one of supervisory capacity. In all such matters, it is the essence of the matter which is important and even the designation of the employee or the name assigned to the class to which he belongs is not so much important. The expression “supervision” means to oversee, to look after. Therefore, “supervision” which is relevant is the supervision done by an employee in a higher position over the employee in a lower position. That way, even a person who attends on a machine or an automatic plant may do technical or manual work but he does not do supervisory work merely because he looks after the machine.

44. In *Titaghur Paper Mills Co. Ltd. v/s. First Industrial Tribunal*¹⁰, Hon'ble Shri Justice G. N. Ray (as His Lordship then was) has held that an employee, to exercise “supervisory power”, may himself have some technical expertise, otherwise, he may not be in a position to exercise proper supervision of the workmen handling sophisticated plant and machinery. But if a person is required to render his technical knowledge in the matter of production along

¹⁰ 1982 Lab IC 307, (Cal)

with other workmen as directed by other supervisors, then, he cannot be said to be exercising supervisory works or administrative works. In this case, it is true that the respondent employee had an M.Sc. qualification, but that by itself, does not render her functions as supervisory. There is no evidence whatsoever that the respondent employee was supervising the work of the 2 helpers in the Stores. The evidence suggests that the two helpers were helping the respondent employee, particularly when it came to dispensing the requisitioned material. The works like issuing of receipts or making data entries or filling and recording of documents were not even urged as supervisory functions by Mr. Sardessai, because these cannot be regarded as supervisory functions. The evidence on record also establishes that the respondent employee had to report to one Vijay Mahale and it is this person who used to supervise the functions of the employees in the Stores. For all these reasons, the findings recorded by the Tribunal cannot be said to be perverse.

45. Mr. Sardessai also relied upon some employment secured by the respondent employee after the termination of her services. Assuming that this is relevant, the material produced on record at the highest points to the respondent employee having secured such employment and her salary details. However, there is no evidence on the record as to the nature of duties being discharged

by her in this new role with some other employer. Based thereon, therefore, it cannot be said that the respondent employee was discharging supervisory functions when in employment with the petitioner employer.

46. It is well settled that writ jurisdiction of the High Court under Article 226 of the Constitution is not appellate, howsoever wide, it is only a supervisory jurisdiction. In ***Surendra Prasad Khugsal v/s. Chairman, MMTC***¹¹ it is held that the writ of *certiorari* can be issued only in cases where the orders or awards of the quasi-judicial authorities suffer from jurisdictional defects or are vitiated by errors of law apparent on the face of the record or violate the rules of natural justice. It is not that every wrong decision of an inferior tribunal is reviewable on *certiorari* by the writ court. In other words, the writ court cannot sit in appeal over the findings recorded by a competent tribunal by re-appreciating the evidence for itself, which would be outside its jurisdiction unless such findings are supported by no evidence or are otherwise perverse. (***State of Orissa & Anr v/s. Murlidhar Jena***¹²) Hence, the writ court will not review the evidence adduced before the tribunal but will only see whether its conclusion is supported by evidence. The question of sufficiency of evidence will not be open

¹¹ 1993 Lab IC 2433 (SC)

¹² AIR (1963) SC 404

before the writ court. (*AG Basavarajappa v/s. State Of Mysore*¹³). Applying these principles, no case is made out to interfere with the findings recorded in the impugned award.

47. At the persuasion of Mr. Sardesai, the material on record was evaluated in some detail, though, as pointed out above, this is not what is expected of a writ court, which does not exercise any appellate jurisdiction. However, even upon such evaluation, no case is made out to interfere with the finding of fact recorded by the Tribunal in the present matter. The findings of fact are well supported by the oral and documentary evidence on record. The Tribunal, in this case, has not applied any incorrect test as urged by the employer. Accordingly, no case is made out to interfere with the impugned award and the findings recorded therein.

48. For all the aforesaid reasons, there is no case made out to interfere with the impugned award or the findings recorded therein. This petition is liable to be dismissed and is hereby dismissed. Further, in the facts of the present case, it is only appropriate that the petitioner pays costs of ₹25,000/- to the respondent within 4 weeks from today. It is ordered accordingly.

13 (1968) 2 LLJ 455 (Mys)

49. The Tribunal is now directed to dispose of the reference bearing No. IT/25/2014 as expeditiously as possible and in any case, within 4 months from today. The parties to place on the record of the Tribunal an authenticated copy of this order.

50. All concerned to act based on the authenticated copy of this order.

M. S. SONAK, J.

msr.