

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7716 OF 2021

M. N. Dastur & Company

...Petitioner

V/s.

Vivek Shinde

...Respondent

Mr. Nikhil Mengde with Mr. Siddhikesh Ghosalkar for Petitioner.

Ms. Siddha Pamecha i/b. Mr. Akshay Naik for Respondent.

CORAM : G. S. KULKARNI, J.

DATE : DECEMBER 13, 2021

PC :

1. This petition challenges an order dated 4 September, 2021 passed by the 10th Labour Court, Mumbai whereby the petitioner's application for rejection of complaint (ULP) No.31 of 2020 filed by the respondent stands rejected.

2. The respondent was in employment of the petitioner-company as a Draughtsman - Electrical (Technical) with effect from 20 October, 1992. After about 27 years of service on 14 February, 2020, service of the respondent came to be terminated. He, accordingly, approached the Labour Court by filing a complaint under Section 28(1)(a), 1(b), 1(d) and 1(f) of Schedule IV of the Maharashtra Recognition of Trade Union & Prevention of Unfair Labour Practices Act, 1972 (for short, "MRTU & PULP Act").

3. On 27 July, 2021 the petitioner filed an application praying for rejection of the said complaint by challenging the jurisdiction of the Labour Court. The contention as urged on behalf of the petitioner was to the effect that the Labour Court did not have jurisdiction to entertain the said complaint as the complainant does not fall within the definition of “Employee” as defined under Section 3(13) of the Bombay Industrial Relation Act (for short, “the Act”). It was contended that the respondent was doing managerial, administrative, supervisory or technical work and he was drawing monthly salary of Rs.55,863/-. It was contended that the complainant was appointed as a Junior Draughtsman and subsequently promoted as a Deputy Chief Designer in the Electrical Instrumentation Department. Hence the complaint ought not to be entertained considering the definition of “Employee” under Section 3(13) of the Industrial Dispute Act and which is the definition under the Act. In passing the impugned order, the learned Labour Court did not find any merit in the application of the petitioner. The learned Labour Judge was of the opinion that it was too pre-mature for the respondent at the initial stage of the proceedings before the petitioner could file its written statement to assail the jurisdiction of the Labour Court. It was observed that there was no material before the Court regarding the nature of duties performed by the respondent, which was necessarily a matter of evidence so that the Court can come to a

conclusion on the issue as to whether the contention of the petitioner is correct and the nature of the work is such that the respondent in fact is working in managerial, administrative, supervisory or technical position in the organization. The learned Labour Judge has observed that such issues cannot be decided merely on the averments as made in the application and to decide such issues, evidence would be required to be led by the parties. In such circumstances, the application of the applicant came to be rejected by the learned Labour Court which is impugned in the present proceeding.

4. Learned counsel for the petitioner in assailing such findings of the learned Labour Judge contended that the learned Judge ought to have decided on the basis of pleadings of the application and ought not to have insisted that evidence be led in the circumstances, as it was not necessary. It is his submission that even the wages/salary which was being paid was also sufficient indication that the respondent was working as Manager (Technical).

5. I am not persuaded to accept the submission as urged on behalf of the petitioner. The approach of the learned Labour Court in the facts of the case is sound. These are issues which require the parties to lead evidence. The respondent is yet to file his evidence to set out the nature of his duties which were being performed by the respondent, which can only be

ascertained on proper evidence. It is not possible to decide such issues merely on the averments as made on behalf of the petitioner and a reply to which would be mainly in denial by the respondent.

6. In the aforesaid circumstances, no case is made out to interfere in the impugned order passed by the Labour Court. The petition is dismissed. No costs.

(G. S. KULKARNI, J.)