

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

905 WRIT PETITION NO.1479 OF 2022

THE JALNA DISTRICT CENTRAL CO-OPERATIVE BANK LTD.
VERSUS
ABHAY BHAGWANRAO WYAHALKAR

...

Advocate for Petitioner : Mr. Bobade Yogesh K
Advocate for Respondent : Mr. S. J. Salunke

CORAM : RAVINDRA V. GHUGE, J.
DATE : 11th March, 2022

ORDER:

1. I have heard the learned Advocates for the respective parties at length.
2. The petitioner Management is aggrieved by the judgment of the Industrial Court, dated 4th December, 2021 delivered in Complaint (ULP) No.250/2016 vide which, the complaint has been allowed and the retiral benefits have been granted to the respondent/original complainant.
3. It is obvious from the pleadings of the parties and the issues framed that the complainant was a Banking Officer, Grade-I with the Bank. The petitioner raised an objection that the complainant was not a workman as defined under section 2(s) of the Industrial Disputes Act, 1947.

4. I find from the impugned judgment that though the Industrial Court had devoted numerous paragraphs for rendering an answer to Issue No.1, the law which is required to be considered, has been completely lost sight of. It is well settled that neither the designation nor the salary structure is material while deciding the status of a complainant. So also, mere assertion in words in the pleadings that the complainant is workman, is not sufficient. Since the complainant has approached the Industrial Court, the onus and burden lies on the complainant to establish, by narrating the nature of his duties, that he was performing manual work or in the clerical cadre to make out a case of his status falling under section 2(s) of the Industrial Disputes Act.

5. The definition of "workman" under section 2(s) is as under:

2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

6. It is thus clear that if the complainant seeks a declaration of his status as a workman he should fall in the first part of the definition and should be excluded by Clauses (iii) and (iv). If he is doing work of a manual or clerical or supervisory category and is not excluded by clause (iii) or clause (iv), though he falls in the first category, he is not excluded by the exception by clauses (iii) and (iv). He would be a Manager and, therefore, would not be a workman.

7. In Chandrashekhar Chintaman Vaidya Vs. National Organic Chemical Industries Limited, Akola, 2010 (3) Mh.L.J. 434, the learned Division Bench of this Court (Coram A.H. Joshi and P. B. Varale, JJ.) has considered the entire law on this count and has concluded that the status of a complainant as a workman would be decided only on the basis of predominant nature of his duties which are decisive and not on the nomenclature that he carries.

8. What I find from the impugned judgment is that the learned Member of the Industrial Court had repeatedly harped upon the “vehement assertion” of the complainant that he is a workman. I find it appropriate to record that none of the learned Advocates representing the parties before the Industrial Court have rendered proper assistance and, therefore, the correct position of law was not placed before the Court.

9. In view of above, since I am interfering on this ground alone, I am not going into the other aspects of the case so as to enable the Industrial Court to apply its mind independently.

10. This petition is partly allowed. The impugned judgment and order dated 04.12.2021 is quashed and set aside. Complaint (ULP) No. 250 of 2016 is restored to the file of the Industrial Court, Jalna with the following directions:.

(b) Both the litigating parties shall appear before the Industrial Court, Jalna on 31st March, 2022. Separate notice need not be issued by the Industrial Court.

(c) The complainant as well as the respondent are at liberty to lead additional evidence with regard to the exact nature of duties and the work performed by the complainant. The recording of such evidence would be concluded on or before 30th July, 2022.

- (e) Pursuant the above, the litigating parties shall advance their oral submissions and complete the same on or before 30th August, 2022.
- (f) The learned Member Industrial Court, Jalna shall deliver it's judgment on or before 22.10.2022.
- (g) It is made clear that the litigating parties shall address the Industrial Court on all the issues together. If the Industrial, Court, while dealing with the complaint finally, comes to a conclusion that the complainant is not a workman, it shall not answer the other issues and dispose of the complaint as being untenable so as to avoid any comments or observations on the claim made by the complainant thereby leaving him at liberty to avail of any other remedy as is permissible in law. However, if the learned Member concludes that the complainant is a workman, it shall answer other issues along with the issue of workman, together and deliver it's judgment.

(RAVINDRA V. GHUGE, J.)