

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

CIVIL APPLICATION NO.3580 OF 2022
IN WP/1109/2021
WITH
WRIT PETITION NO.1109 OF 2021

BONATRANS EMPLOYEES UNION THROUGH ITS GENERAL SECRETARY
VERSUS
BONATRANS INDIA PVT LTD THROUGH THE CHIEF EXECUTIVE
OFFICER

...

Advocate for the Applicant/ Petitioner : Shri T.K. Prabhakaran
Advocate for the Respondent : Shri Sudhir K. Talsania, Senior Advocate
a/w Shri Sachind V. Dankh and Shri Lalit B. Deshmukh

...

WITH
CIVIL APPLICATION NO.4153 OF 2022
(Stamp No.8528/2022)
IN
WRIT PETITION (STAMP) NO.2839 OF 2020
WITH
WRIT PETITION (STAMP) NO.2839 OF 2020

BONATRANS INDIA PVT. LTD.
VERSUS
BONATRANS EMPLOYEES UNION

...

Advocate for the Petitioner : Shri Sudhir K. Talsania, Senior Advocate
a/w Shri Sachind V. Dankh and Shri Lalit B. Deshmukh
Advocate for the Respondent : Shri T.K. Prabhakaran

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd March, 2022

Per Court:

1. Heard.

2. For the reasons set out in Civil Application No.3580/2022, the same is allowed. Amendment be carried out forthwith.

3. By consent of the parties, Writ Petition No.1109/2021 is taken up for hearing.

4. Having considered the submissions of the learned advocate for the petitioner and the learned senior advocate on behalf of the respondent, for quite sometime, the following controversy seems to be the heart and soul of the litigation as well as the conflict between the employees/ workers and the Management:-

(a) Whether, the workers/ employees before the Industrial Court are "workmen" under Section 2(s) of the Industrial Disputes Act, 1947?

(b) Whether, the workman can be subjected to disciplinary proceedings in accordance with the service conditions prescribed?

(c) Whether, the employer, though the strength of workers may be less than 50, will have to follow the mechanism of conducting domestic enquiry for proving charges against the employees/ workers, as per the Model Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946?

5. The Industrial Court has dealt with the application for interim relief exhibit U/2 filed by the petitioner in Complaint (ULP) No.146/2019 and by the impugned order, has declined to protect the employees from the enquiry, which is initiated by the employer.

6. It appears that the Industrial Court is yet to decide whether, the workers represented by the petitioner Union can be termed as "workmen" in view of Section 2(s) of the Industrial Disputes Act, 1947. Since the provisions of the MRTU & PULP Act, 1971 mandate that the complainant/ employee will have to be a "workman" under Section 2(s) and the respondent will have to be an "industry" under Section 2(j) of the Industrial Disputes Act, 1947, if either of the parties are not covered by the respective definitions, the complaint would not be maintainable. For illustration, if the complainant is not a workman, notwithstanding the respondent being an industry, the complaint would not be maintainable and such an employee cannot have access to the Labour Court or the Industrial Court. In the event, the complainant is a workman and the respondent is not an industry, the result would be the same.

7. The learned Senior Advocate appearing for the Management informs that the application exhibit C/8 was moved before the Industrial Court in the same Complaint (ULP) No.146/2019 filed by the petitioner Union, seeking a decision as to whether, the workers/ employees at issue would be workmen or not. By an order dated 11.12.2019, in the face of the opposition by the employees, exhibit C/8 was rejected to the extent of not framing a preliminary issue. The Management, therefore, preferred Writ Petition (stamp) No.2839/2020, which has been dismissed in default. Civil Application No.4153/2022 [(stamp) No.8528/2022] has been filed

for restoration of the said writ petition.

8. By consent of the parties, the said Civil Application and the rejected Writ Petition are taken on the Board. By consent and for the reasons set out, the Civil Application No.4153/2022 is allowed. The Writ Petition (stamp) No.2839/2020 is restored at the stage at which it has been dismissed in default.

9. Since I find that the nucleus of the dispute is as to whether, the employees would be workmen or not and since this issue begs for an urgent answer in order to put one limb of the dispute or litigation between the parties to an end, I called upon the learned advocate for the Union to state as to whether, the issue as to the status of the employees being decided by the Industrial Court peremptorily, is acceptable or not. The learned advocate, who has also caused an appearance in Writ Petition (stamp) No.2839/2020, submits on instructions that as the status-quo is being maintained today and the enquiry has been kept in abeyance, the Union would be agreeable if the Industrial Court decides the status of employees in the light of exhibit C/8 filed by the Management. The learned Senior Advocate submits that this Court may pass an appropriate order.

10. Since I find that exhibit C/8 was filed by the Management seeking a decision peremptorily on the status of the complainants, it would be in the interest of both the parties that this issue is dealt with by

the Industrial Court as this contentious issue, which has been bothering the parties and which has been a cause of multifarious litigation, would get an answer through the adjudicatory process. It would be gainsaid that this issue can be decided in the light of the view taken by the learned Division Bench of this Court at Nagpur in ***Chandrashekhar Chintaman Vaidya v/s National Organic Chemical, 2010 (II) CLR 121***, wherein, the Division Bench has laid down the tests for deciding the status of an employee.

11. In view of the above, Writ Petition (stamp) No.2839/2020 is partly allowed. The impugned order dated 11.12.2019 rejecting exhibit C/8 is quashed and set aside and C/8 is allowed to the following extent :-

(a) The following issue shall be framed by the Industrial Court on 31.03.2022:-

Whether, the respondent/ employer proves that the employees, for whom the complainant Union is espousing the cause, are covered by the definition of workman under Section 2(s) of the Industrial Disputes Act, 1947?

(b) For framing the above issue, Complaint (ULP) No.146/2019, which is now posted on 27.06.2022, shall be pre-poned to 31.03.2022.

(c) The Complainant Union will commence the recording of oral and documentary evidence on the above issue and the same would be concluded in between 01.04.2022 to 20.04.2022.

(d) The Management shall conclude the recording of it's evidence in between 21.04.2022 till 07.05.2022.

(e) Thereafter, the matter would be listed for recording of oral submissions of the parties on 06.06.2022 to be concluded by 10.06.2022.

(f) The learned Member, Industrial Court, Aurangabad, is requested to deliver it's order on the above stated issue, on 30.06.2022.

(g) Until 30.06.2022, the status-quo as existing today shall be maintained.

(h) It is made clear that after the above stated issue is decided, the Industrial Court is at liberty to deal with the complaint as is permissible in law.

(i) The protection granted by this Court on the basis of the statement made by the Management in Writ Petition No.1109/2021, would continue for a period of 15 days after the Industrial Court delivers it's order on 30.06.2022.

12. Considering the above directions, Writ Petition No.1109/2021 also stands disposed off.