

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

115 WRIT PETITION NO.9857 OF 2022

SHAIKH YASHEEN SHAIKH AHMED
VERSUS
THE STATE OF MAHARASHTRA THROUGH PRINCIPAL SECRETARY
AND OTHERS

...
Advocate for Petitioner : Ms. Upadhyaya Dhongade Suchita S.
AGP for Respondents-State : Mr. P. S. Patil
...

**CORAM : RAVINDRA V. GHUGE
AND
ARUN R. PEDNEKER, JJ.**

DATE : 27th September, 2022

PER COURT :

1. The petitioner has put forth prayer Clause 'B' on the basis of a claim that the petitioner has been working as a Sweeper since 1983. His appointment order indicates his nomenclature as 'Gangman'. It is, therefore, contended that though the appointment order indicates his position as 'Gangman', he worked all throughout as a 'Sweeper', should be treated as a 'Sweeper' and the nomenclature should be changed.

2. We are of the view that since the petitioner falls within the definition of 'Workman' under Section 2 (s) of the I.D.Act and an

employee under Section 3(5) of MRTU and PULP Act, 1971, and as the Zilla Parishad is an industry under Section 2 (j) of the I.D.Act, the petitioner will have to approach the Industrial Court by preferring a ULP complaint to make out a case on the basis of oral and documentary evidence that the petitioner, though appointed as a 'Gangman', was actually working as a 'Sweeper' in his entire service tenure. Such disputed issues cannot be dealt with by this Court under Article 226 of the Constitution.

3. The petitioner, thus, has two options. Firstly, of approaching the Industrial Court under the MRTU and PULP Act, 1971, since it can be said that the cause raised by the petitioner is a recurring cause of action. Secondly, the petitioner can also raise an industrial dispute under Section 2 (k) of the Industrial Disputes Act, 1947.

4. With the above liberty kept open, this petition is disposed off.

(ARUN R. PEDNEKER, J.)

(RAVINDRA V. GHUGE, J.)

gawade/-.