

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

**CIVIL WRIT PETITION NO.9287 OF 2014**

Sunil Jagannath Tale, ]  
age 49 years Occ. Nil, ]  
C/o Shri Somnath Pawar, ]  
"Jaigurudeo" Building, ]  
Shivshankar Colony, ]  
Besides Roopsangam ]  
Photo Studio, Aurangabad ].. Petitioner.

**Versus.**

1) Aurangabad Electricals Limited, ]  
(Plant -III), Gut No. 120-122, ]  
Village Pangra Road, Post Chitegaon, ]  
Tq. Paithan, Dist. Aurangabad 431 105 ]  
2) Maharashtra Audyogik General ]  
Kamgar Sanghatna , Plot No.3, ]  
Suname Residency, ]  
Rachnakar Colony, Parampura, ]  
Aurangabad 431 005 ].. Respondents.

Mr. Ashok A. More for the Petitioner.  
Mr. B. R. Kawre for Respondent No.1.

**Coram : Sharmila U. Deshmukh, J.**

**Reserved on : February 20, 2023.**

**Pronounced on : March 28, 2023.**

**JUDGMENT :**

1. Rule. Rule made returnable forthwith and taken up for final hearing with the consent of the parties. Learned counsel appearing for respondent No.1 waives notice on behalf

of respondent No.1. None for respondent No.2, trade union. As Respondent No.1 is the only contesting party, the Petition is taken up for final hearing.

2. By this petition, the challenge is to the order dated 19<sup>th</sup> July 2014 passed in Complaint ULP No.75 of 2012 dismissing the complaint by holding that the petitioner was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (for short "the Act of 1947"). This petition has been preferred only by the petitioner although Complaint ULP No.75 of 2012 was filed on behalf of petitioner and 19 others and as such this Court has examined the issue qua the Petitioner only.

3. By an amendment to the Petition, a challenge was incorporated to the order dated 19<sup>th</sup> October 2019 passed by the Labour Court in Complaint ULP No.30 of 2013 filed by the petitioner challenging the termination of services of petitioner, which came to be dismissed for non prosecution.

4. During the course of argument learned counsel for the petitioner agreed to confine his challenge to the

determination of the issue as to whether the petitioner falls within the definition of “workman” and as such this court had confined itself to the validity of judgment and order dated 19<sup>th</sup> July 2014 with liberty to the petitioner to adopt appropriate proceedings as regards the dismissal of Complaint ULP No.30 of 2013 for non prosecution.

5. Briefly stated the facts of the case are as under:

Complaint of unfair labour practice came to be filed by 20 employees of Respondent No.1-company under section 28 read with Item Nos.1 (a), (b) and (c), 2 (a) and (b), and 3 of Schedule II and Item Nos.5,6, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of unfair Labour Practices Act, 1971 (for short “**MRTU Act**”).

During the pendency of complaint, transfer order came to be issued to the Petitioner directing him to report at Pantnagar on 5<sup>th</sup> August 2012. An application for interim relief was filed below Exhibit-U-2 seeking direction for withdrawal of the transfer order and to restrain the Respondent No.1 from changing the service conditions. In response to the application seeking interim relief, Respondent No.1 raised a preliminary

objection that the complainants therein are not covered by the definition of "workman" under section 2(s) of the Act of 1947 or "employee" within the meaning of section 3(5) of the MRTU Act.

6. Considering the objection of Respondent No.1 preliminary issues came to be framed as under :

- 1) *Whether the complainants are covered within the definition of "workmen" as contemplated under section 2(s) of the Industrial Disputes Act and Section 3(5) of the MRTU & PULP Act ?*
- 2) *Whether the complaint is maintainable ?*

The issues came to be answered as against the complainants and consequently the complaint came to be dismissed.

7. Heard Mr. More, learned counsel appearing for the petitioner and Mr. Kawre appearing for Respondent No.1.

8. Mr. More, learned counsel for the petitioner submits that during the pendency of Complaint ULP No.75 of 2012, interim order came to be passed on 30<sup>th</sup> July 2012 directing Respondent No.1 not to pass adverse orders affecting

the service conditions of the complainants therein. He would submit that despite the order of 30<sup>th</sup> July 2012, the petitioner was not allowed to resume his duties and back dated transfer order was issued transferring the Petitioner at Pantnagar. He would further submit that 10 out of 19 workmen were pressurized by Respondent No.1 to withdraw from the complaint. He would further submit that considering the definition of workman under section 2(s) of the Act of 1947, the person who being employed in the supervisory capacity by reason of powers vested in him carries out function primarily of managerial nature is excluded. He would submit that the petitioner was carrying out the work of technical nature. He would further submit that it is a settled position that the predominant nature of duty is the determining factor and salary of the employee is not conclusive. He has taken this Court through the affidavit-in-reply filed by respondent No.1 and in particular paragraph No.5, wherein it is stated that the petitioner throughout was considered as supervisor. He would contend that even if it is accepted that the petitioner was engaged as supervisor he would be excluded if he carried out managerial and administrative duties. He has taken this Court through the evidence adduced and would submit that there

was no power to take any decision. He would further submit that the Industrial Court has erred by taking into consideration the fact that he was not member of the union and as such was not a workman. In support of his submission, he has relied upon the following decisions:

1. ***Aloysius Nunes vs M/s. Thomas Cook India Ltd,<sup>1</sup>***;
2. ***Chandrashekhar Chintaman Vaidya vs. National Organic Chemical Industries Ltd,<sup>2</sup>***
3. ***Devinder Singh vs. Municipal Council, Sanaur,<sup>3</sup>***

9. *Per contra*, Mr. Kawre, learned counsel for Respondent No.1 has invited attention of this Court to the curriculum vitae submitted by the Petitioner. He would submit that the previous job profile of the Petitioner indicates that the Petitioner was working as Service Engineer and the application annexed at Page 146 of the Petition shows that the position applied for was that of Maintenance Engineer. He has further invited attention of this Court to the evidence and submitted that it is an admitted position that the petitioner was working as a supervisor. He would further submit that there is

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<sup>1</sup>2000(3) BomCR 658

<sup>2</sup>2010 (7) LJSOFT 142

<sup>3</sup>2011 (5) Mh. L. J.

recognized Union i.e. Respondent No.2, with which Respondent No.1 entered into settlement and the petitioner admittedly is not a member of the Union. He submits that the petitioner has been receiving regular increments which are applicable to the supervisory staff and not to the workman who are bound by the settlement entered into between the parties.

10. Considered the rival submission of the parties.

11. Before advertng to the merits of the case, it would be necessary to determine the party on whom the burden to prove the preliminary issue lies. This Court in ***Mukund Staff & Officers v. Mukund Ltd [2008(2) MhLJ 416]***, after considering the various judicial pronouncements, has held that the initial burden was on the employee to prove that he is a workman within the meaning of Section 2(s) of the Act of 1947 because the employer has denied that the employee is a workman and that there is no question of putting the burden on the parties to prove the negative. Similar view has been taken by this Court in ***Northcote Nursing Home Pvt Ltd v. Zarine H Rahina [2001(3) MhLJ 476]***. Paragraph 8 and 9 of the said decision read thus :

"8. *There is much substance in the contention of the learned counsel that the respondent employee had filed the complaint in the capacity of an employee and she asserted positively that she was a workman as contemplated under the I. D. Act and therefore, she was entitled to file the complaint filed by her. In my opinion and on the general principles of civil law it is for the party to lead evidence to prove the positive facts and it is not for the other side to prove the negative facts. If the Respondent had pleaded positively that she was a workman as contemplated by law in that case it was for her to step in the witness box to prove her positive assertion that the duties performed by her fell within the parameters of the definition of workman. It is not for the other side to prove how the respondent was not a workman. It is an admitted fact that the Respondent was employed as a Resident Medical Officer in a Managerial and Administrative Capacity by a contract of service.*

9. *In the aforesaid circumstances heavy burden would lie on the respondent to prove from the duties she performed that she satisfied the criteria laid down within the parameters of the definition of section. It would be thereafter for the petitioners management to rebut the evidence to show that from the duties performed by the respondent she fell in the exceptions of the definition and that she did not satisfy even the main definition of the Act. In the aforesaid circumstances it is not possible to hold that it was for the petitioners management to lead evidence first to prove the negative that the respondent was not a workman. It is for the respondent to prove that she was a workman within the meaning of the definition of section 2(s) of the I. D. Act. I, therefore, quash and set aside the impugned order and hold that it is for the respondent to lead the evidence first on the point of workman as also on the point of her complaint of unfair labour practice complained by her. It would be for the complainant to prove the allegations of the unfair*

*labour practice on the basis of the pleadings in the written statement of the Respondent.....”*

12. Considering the aforesaid judicial pronouncements, the initial burden is upon the employee to prove that he is a “*workman*” as defined in Section 2(s) of the Act of 1947.

13. Before proceeding further, it would be necessary to advert to the provisions of section 2(s) of the Act of 1947 which definition has been adopted by Section 3(5) of the MRTU Act and reads 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 ten thousand 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."*

14. Section 3(5) of the MRTU Act defines an "employee" in the following words :-

*"(5) "employee" , in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in Clause (13) of sections of the Bombay Act; and in any other case, means a workman as defined in Clause (s) of section 2 of the Central Act, and a sales promotion employee as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976";*

15. It is case of the Petitioner that he joined the services of Respondent No.1 on 15<sup>th</sup> November 2015 as supervisor and his duty was to look after the maintenance of machine shop of Respondent No.1. It is his contention that the work assigned to him was technical in nature and he had no administrative or managerial power and was required to maintain machine as directed by respondent No.1-management through maintenance manager under whom the petitioner was discharging duties. The complaint came to be filed inasmuch as respondent No.1 was not extending benefits at par with the members of respondent No.2-Union who were carrying out the

same duties resulting in unlawful labour practices. The case of the petitioner is that they were espousing their cause by forming trade union and as such respondent No.1 was victimizing the petitioner and 19 others who are not members of respondent No.2-Union leading to filing of the complaint ULP No.75 of 2012.

16. On the other hand, the stand of Respondent No.1-employer is that the Petitioner is technically qualified; the application was for the post of Engineer and the Petitioner was appointed on the post of "supervisor-BS maintenance". The Respondent No.1 substantiates its stand, that the Petitioner was employed in supervisory capacity, by relying on the position that the benefits of wage settlement was extended to the workmen and not to the Managers, supervisors and officers category and the Petitioner was drawing a salary of Rs.13,288/- per mensem and was given regular increments.

17. To sum up the rival claims, it is the case of the Petitioner that he falls within the substantive part of Section 2(s) of the Act of 1947 by carrying out work of technical nature and was not carrying out managerial or administrative functions

and therefore does not fall within the exclusionary clauses i.e. clauses (iii) and (iv) of Section 2(s) and it is the case of Respondent No.1 that the Petitioner was working as supervisor and was drawing salary exceeding the prescribed limit and as such falls within the exclusionary clause.

18. Considering the crux of the matter, it will be beneficial to first refer to the judicial pronouncements analysing Section 2(s) of the Act of 1947. This Court in **A.K. Patel vs Indian Hotels Company Ltd [2005(3) Bom CR 645]** has observed that it is now a settled principle of law that before an employee can be regarded as a workman within the meaning of Section 2(s), it must be demonstrated that the nature of work which has been performed by the employee, brings him or her within the substantive part of Section 2(s). In other words, it would not be enough to establish that none of the exceptions that has been carved out in Section 2(s) applies, but the fundamental requirement for establishing that an employee is a workman is that the work of the employee must be within the scope and purview of the substantive part of Section 2(s). In the said decision, this Court in paragraph 14 considered the decision of the Apex Court in the case of **Burman Shell Oil**

***Storage and Distributing Co. of India Ltd v Burmah Shell***

***Management Staff Association, [AIR 1971 SC 922]*** as under:

*"14. A significant element of guidance can be derived from the decision of the Supreme Court in Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. Burmah Shell Management Staff Association. The decision of a Bench of three Learned Judges of the Supreme Court lays down both binding principles of law, and an assessment of a factual situation which bears a strong resemblance to the facts of the present case. One of the categories that the Supreme Court was required to consider in the course of its judgment, was the category of Transport Engineers. The Transport Engineer in that case was working in an installation of Burmah Shell which was maintained for the purposes of repairs and maintenance of all motor vehicles owned by the Company as well as for fabrication of bodies of lorries. The Transport Engineer was responsible for the entire work of repairing, servicing and maintenance of vehicles as well as for the work of modification and fabrication of motor lorries. There were several employees working under him in the establishment, persons whom he had guided as regards the manner in which the job would be done. The Transport Engineer in fact, worked with his subordinates. In this back drop, the Supreme Court held that essentially the work of the Transport Engineer was to supervise the work which was being done by skilled and unskilled workmen and to ensure that the work was properly done. The Court held that the major part of the duty consisted of supervisory work rather than his own personal technical work which was only incidental to the main work of repair, servicing, maintenance and fabrication inasmuch as in his supervisory capacity, he diagnosed the defects, inspected the work done, made his personal tests and certified that the work had been properly carried out. One of the issues that was considered by the Court was the consequence in law of the factual position that the Engineer may by himself*

*also be required to apply and use his own technical knowledge. Dealing with this issue, the Supreme Court held thus :*

*"Even if the Transport Engineer uses his technical knowledge, it is used primarily for the purpose of supervising the work done by the skilled manual labourers who carry out the actual repairs, do the servicing or maintenance or complete the fabrication."*

*The Supreme Court held that there is a distinction between the technical and manual work, as between employments in which the duties that were being entrusted were substantially manual as distinguished from those in which the duties were essentially of a supervisory nature:*

*"If, on the other hand, he is merely employed in supervising the work of others, the fact that, for the purpose of proper supervision, he is required to have technical knowledge will not convert his supervisory work into technical work. The work of giving advice and guidance cannot be held to be an employment to do technical work."*

*While dealing with the case of a District Engineer, the Court noted that the work of scrutinising tenders that were given to the Contractors as well as checking construction work done by the Contractors and the process of certifying bills was in the nature of supervision. In the case of the Foreman (Chemicals), the main part of his duty was responsibility for the blending of chemicals. A large part of the work was done by the workmen under his supervision and he made random checks. The Supreme Court held that these duties were primarily and substantially of a supervisory nature and his own manual work was only incidental and formed a small part of his duties."*

19. In the case of ***Union Carbide (India) Ltd vs Ramesh Kumbha & Ors [1991(1) Bom CR 705]*** this Court has held in paragraphs 10 and 12 as under:

*"10. A perusal of the above definitions would show that, in order that the first respondent is held to be a "workman", it must be established that he falls within the main part of the definition in section 2(s) of the I.D. Act and is not excluded by the concluding portion. I am concerned with the first part of sub-clause (iv) of Clause (s) viz. who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem. If, therefore, it is established that the first respondent was employed in a supervisory capacity drawing wages exceeding Rs.1600/- per mensem, he would be outside the purview of the definition of the word "workman" within the meaning of section 2(s) of the I.D. Act. If that be so, the first respondent would also be outside the purview of the definition of the word "employee" within the meaning of section 3(5) of the 1971 Act.*

11. ....

12. *Before dealing with the findings and the evidence on record, I will refer to some of the decisions, to which my attention has been invited by both the learned Counsel. Broadly speaking the test that have emerged from the ratio of the decisions can be summed up as under :-*

- i) It is the dominant purpose of the employment that is relevant and not some additional duties which may be performed by the employee.*
- ii) It is not the designation of the post held by the employee which is relevant, but what is relevant is the nature of duties performed by the employee.*
- iii) The Court has to find out whether the employee can*

- bind the company in the matter of some decisions taken on behalf of the company.*
- iv) What is the nature of the supervisory duties performed by the employee? Do they include directing the subordinates to do their work and/or to oversee their performance?*
  - v) Does the employee have power either to recommend or sanction leave of the workmen working under him?*
  - vi) Does he have the power to take any disciplinary action against the workmen working under him?*
  - vii) Does he have power to assign duties and distribute the work?*
  - viii) Does the employee have the authority to indent material and to distribute the same amongst the workmen?*
  - ix) Does the employee have power to supervise the work of men or does he supervise only machines and not the work of men?*
  - x) Does the employee have any workmen working under him and does he write their confidential reports?"*

20. In the present context, it will be beneficial to refer to the decision of the Apex Court in ***National Engineering Industries Ltd. V. Shri Kishan Bhageria [AIR 1988 SC 329]***. The Apex Court therein noticed the distinction between expression 'supervisory', 'managerial' and 'administrative'. The Apex Court has also noted that these terms or expressions cannot be put in a water tight compartment. However, the Apex Court has observed that one must always look into the main work and that must be found out from the main duties. A supervisor is

one who could bind the company to take some kind of decision on behalf of the company. One who was reporting merely as to the affairs of the company and making assessment for the purpose of reporting was not a supervisor. The Court therefore will have to bear in mind these tests while examining, as to what is the main work of an employee.

21. Similarly, in ***Anand Regional Coop. Oil Seedsgrowers' Union Ltd. V. Shaileshkumar Harshadbhai Shah [(2006) 6 SCC 548]***, the Apex Court while dealing with the case of an employee working as Assistant Executive in the Quality Control Department of the management, in which the issue was whether the claimant was "workman" or not observed in paragraphs 13 to 17 as under :-

"13.The ingredients of the definition of "workman" must be considered having regard to the following factors :

- (i) Any person employed to do any skilled or unskilled work, but does not include any such person employed in any industry for hire or reward.
- (ii) There must exist a relationship of employer and employee.
- (iii) The persons inter alia excluded are those who are employed mainly in a managerial or administrative

capacity.

14. For determining the question as to whether a person employed in an industry is a workman or not; not only the nature of work performed by him but also terms of the appointment in the job performed are relevant considerations.
15. Supervision contemplates direction and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee, or the name assigned to, the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs. For the said purpose, it is necessary to prove that there were some persons working under him whose work is required to be supervised. Being in charge of the Section alone and that too it being a small one and relating to quality control would not answer the test.
16. The precise question came up for consideration in Ananda Bazar Patrika (P) Ltd. vs. Workmen [(1970)3 SCC 248 wherein it was held :

*"3. The question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principal duties carried out by him are those of a supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity; and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity."*

17. A person indisputably carries on supervisory work if

he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence."

22. The conspectus of the aforesaid judicial pronouncements sets out the indisputable position that it is predominant nature of duties which are required to be taken into consideration. Supervision contemplates direction and control. It is not the designation of person which is a conclusive test but what is required to be examined is the predominant nature of duties. For satisfying the test of "supervisor" it is necessary to establish that there are persons working under him, whose work the employee is required to oversee and one of the aspects of supervision include the assignment of duties and distribution of work; the power to recommend or sanction leave of those workmen subordinate to him; power to take disciplinary action and so on.

23. Keeping in mind the guidelines laid down by the aforesaid judicial pronouncements, the evidence adduced in the present case is required to be considered. If the evidence on record establishes that the Petitioner was employed in supervisory category then the admitted position of his salary

being in excess of Rs.10,000/ per mensem would exclude him from the category of workman. On the other hand, if it is established that the Petitioner was employed in technical work and was not carrying out managerial or administrative functions, then he would fall within the definition of "workman". As indicated above, the initial burden is upon the Petitioner to prove that he falls within the definition of workman set out in Section 2(s) of the Act of 1947.

24. The Petitioner has not stepped in the witness box and the Complainant No.5 has adduced evidence on behalf of all the complainants. In paragraph 3 of his Affidavit of evidence he has deposed that Respondent No.1 is an Engineering Industry and the complainants were carrying out the work of technical nature in the production department and maintenance department. In paragraph 4, he has deposed that the complainants were not carrying out administrative or managerial work and they had no power to chargesheet the employees, sanction leave, appoint employees or dismiss them. He has deposed that although the complainants were designated as supervisors, by reason of the absence of powers enumerated in paragraph 4, the complainants were workmen.

He has thereafter deposed in respect of the work carried out by each of the complainants. However, in the present case we are concerned only as regards the petitioner. In paragraph 4 (d), he has deposed that the petitioner had joined the service of Respondent No.1 as supervisor on 15<sup>th</sup> November 2005 and was working in the maintenance department. He has further deposed that on 13<sup>th</sup> December 2012, the petitioner's services came to be terminated for the reason that he was espousing the cause of union.

25. The witness was cross-examined as regards each of the complainants. The witness has admitted that for the purpose of indenting the material, the signature of supervisor is necessary and no material is supplied by the store on the demand of workmen. As regards the Petitioner, the witness admitted that the petitioner was working as supervisor. He has further admitted that the requisition slips for indenting material contains the signature of supervisor and workmen, and his salary was exceeding the sum of Rs.10,000/-. The witness has denied the suggestions given as regards the previous job profiles and past experiences of the Petitioner. He has further denied that Complainant No.4 was working as Head

of Maintenance Department. The witness has admitted that Respondent No.2 is the recognised union and all permanent workmen are the members of that Union. He has further admitted that the benefits of settlement are given to the workers and not to the Manager, Supervisor and Officer. He has admitted that he has been given regular increments since the joining of service.

26. Respondent No.1 has examined its Deputy General Manager and the Manager-HR in support of its case. The Deputy General Manager in his affidavit in lieu of evidence has deposed that the complainants are technically qualified as Diploma in Mechanical Engineering and as graduates and they have filed applications for the post of Engineers and Supervisors. He has further deposed as regards the nature of duties of each of the complainants who are 20 in number. As regards the present petitioner, the witness has deposed as under:

*"9. That the complainant No.04. Sunil Jagananth Tale was joined with the respondent No.1 Company from 15-11-2005 as engineering the supervisory category on the payment of Rs.13288/- per month. That the work of the complainant is supervisory nature, considering the work performance he is confirmed by order dated 15-05-2006.*

*Naturally, he has given huge salary rise and his salary is increased up to Rs.13288/- per month. The complainant is enjoying the benefits being supervisor from the date of promotion. The nature of work of the complainant is purely supervisory in nature. He is working at production department, wherein 02 Nos workers are working under his supervision and control. The complainant is required to be supervise and control over the activities to see and examine whether the work is completed or not in satisfactory manner and in keeping with specifications. The nature of work, designation is clearly indicated that he is supervisor. The dominant nature of the duties of the complainant is supervisory and not technical as being claimed. The complainant committed very serious misconduct therefore by following due procedure of law and adhering principles of natural justice his services are dismissed by order dated 13-12-2012. The complainant has challenged said dismissal order before Labour Court at Aurangabad on this count the complaint become infructuous and liable to be dismissed.*

*10. The complainant has submitted resume and application for employment dated 16-11-2005 showing his education qualification, past experience, job responsibility and position applied for. The respondent issued appointment dated 16-5-2006 as Supervisor (B/S Maint). The appointment is signed by the Vice President (Corp HR) of the company. The experience certificate dated 16-3-2008 was issued as per the request of the complainant. The said certificate is signed by Arun Pathak-Sr. Manager H.R. He was granted increment from time to time, the increment letter dated 30-11-2010 with payment abstract is self explanatory to indicate the position of the complainant as Supervisor. The complainant has signed purchase requisition order in the capacity of Supervisor., the purchase order dated 26-05-2012, 11-05-2012 are enclosed on the records. The complainant has signed the same and contents are true and correct. The complainant committed serious misconduct therefore the charge sheet was issued on the base of finding his services are dismissed on 13-12-2012. The complainant has challenged the said order before the labour court in complaint ULP No.30/2013 and said complaint is subjudice*

*for hearing.*

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.....

*41. The complainants are decision maker to the extent of their department therefore, they are not workman. They are holding the post of **Supervisory nature**, and their duties are of supervisory natures. The Company having independent system to issue appointment letter, sanction leave, grant promotion or take disciplinary action therefore no specific power in respect of above were granted to other employees. The Complainants are enjoying the benefits of pay scale, dearness allowances and other benefits of the category known as supervisory staff, which they could not have been given if they are workman. When the complainants are getting the benefits of a higher cadre, it could not be permissible for them to say that for other purposes they would be not be governed in the supervisory category in which they are paid salary. The complainants are holding the capacity of supervisor and drawing wages exceeding of Rs.10,500/- per month therefore the complainants filed by the complainants are not maintainable."*

27. In the cross-examination, the witness has deposed that the Complainants are vested with managerial powers but not administrative powers; that the authority to take work from subordinate workers relating to production is managerial power and that Supervisor is also a manager.

28. The second witness of Respondent No-1, namely, the Manager-HR, has been examined to produce the appointment orders of complainants. The witness has admitted that the powers to appoint the workman or to take disciplinary action are not delegated to the complainant. The witness has denied the suggestion that the administrative and managerial powers are not conferred on the complainant.

29. I have minutely scrutinized the evidence produced on record. The complaint was filed by 20 employees who were engaged in different positions as supervisor, store assistant, engineer, apprentice, job inspector, trainee supervisor etc. As the complainants were handling different work profiles, it is expected that each complainant would step into the witness box and depose as to the nature of his duties. In the present case, Complainant No.5, who joined as Trainee Inspector, has deposed on behalf of all the Complainants. Complainant No.5 being an employee himself cannot be said to have detailed knowledge about the nature of duties of each of the Complainants. It is for this reason that Complainant No.5 has deposed generally that all the complainants were carrying out the work of technical nature and were not carrying out the

managerial or administrative duties. It appears that the general deposition has been made to meet the requirements of Section 2(s) of the Act of 1947. But there is something more which is required to be adduced before it can be said that the Petitioner has discharged the initial burden cast upon him. The witness has thereafter proceeded to define the duties of each of the complainants. There is no deposition as regards the source of information of this witness. As regards the nature of duties of the Petitioner, the only deposition is that the Petitioner was engaged as supervisor in the maintenance department. The witness does not depose as regards the precise nature of duties carried out by the Petitioner. The submission of the learned counsel for Petitioner is that the Petitioner was carrying out technical work, however, there is no material brought on record to establish that technical work was carried out by the Petitioner. Apart from deposing that the Petitioner was engaged as supervisor in the maintenance department, there is no material brought on record to establish that the Petitioner was engaged in technical work. As held by the Apex Court in ***Burmah Shell (supra)*** that for the purpose of proper supervision requirement of technical knowledge will not convert his supervisory work into technical work. Admittedly

the educational qualification of the Petitioner is that of an Engineer. It is also admitted that the designation of his post was supervisor. In that event, it was necessary for the Petitioner to adduce cogent evidence to establish the technical work carried out by the Petitioner. The general deposition as regards all the complainants that they were engaged in technical work and were not carrying out managerial or administrative work, cannot further the case of Petitioner in the absence of any evidence as regards the precise nature of duties of the Petitioner.

30. It will also be worthwhile to note that Respondent No.1 was put at a disadvantage inasmuch as the complainants individually did not step into the witness box and Respondent No.1 was deprived of the benefit to cross-examine the individual complainants as regards the nature of their duties. It is apparent from the cross-examination of Complainant No.5 that suggestions given were denied for want of knowledge.

31. Considering the evidence on record, in my opinion, the Petitioner has failed to discharge the initial burden cast upon him to establish that he was carrying out the technical

work as claimed and as such falls within the substantive portion of Section 2(s) and is not excluded by the exclusionary clause. Merely because Respondent No.1 is an Engineering industry, it cannot be held that the complainants engaged in different positions were carrying out the work of technical nature. To discharge the initial burden, it was necessary for the petitioner to step into the witness box and depose about the exact nature of work to conclusively establish that no part of work carried out by him amounted to carrying out managerial or administrative functions.

32. Although the petition could have been dismissed on the failure of the Petitioner to discharge the initial burden, I have gone further and examined the evidence of Respondent No.1. It was the case of Respondent No.1 that the Petitioner was appointed on the post of supervisor and was drawing a salary exceeding the prescribed limit and was thus excluded from the definition of workman. The Deputy General Manager has deposed that the petitioner was working in the production department and two workers were subordinate to him and were working under his supervision and control. The witness has further deposed that the petitioner is required to supervise

and control over the activities and see whether the work is completed in satisfactory manner and keeping with the specification. He has further deposed that the nature of duties of the Petitioner is supervisory and not technical. The witness has further deposed that the Petitioner has signed purchase requisition orders in the capacity of supervisor. The cross examination of this witness does not extend to the individual complainants and is common as regards all the complainants. Considering that this witness has deposed specifically as regards the nature of duties of each complainant, detailed cross-examination was expected in respect of each of the Complainants. Further, this witness has specifically stated that the complainants are vested with managerial powers. As this Court is concerned only with the case of Petitioner, I do not find any material admission being elicited from this witness as regards the nature of duties of Petitioner. On the contrary, the testimony as regards the managerial functions of the Petitioner has not been shaken in the cross-examination.

33. As regards the submission that the complainants had no authority to initiate disciplinary action or to sanction leave etc, it has come in the evidence of Respondent No.1 that

there is an independent system to take care of these issues. An industrial establishment may consist of several divisions entrusted with various responsibilities and as such there is segregation of responsibilities. A case in point is the human resource department which is usually entrusted with the responsibility of screening, recruitment, training and dealing with the leave applications of employees. With the evolving businesses, various industries are undergoing changes in the traditional set ups and it is not unusual to find different divisions within the industry entrusted with the distinct responsibilities. In the present case, the burden was upon the employee to prove that the nature of duties being carried out by the employee to establish that he was employed for doing technical work in Respondent No.1-company, which the employee has failed to discharge. Respondent No.1 has through its Deputy General Manager brought out the fact that there were 2 workmen subordinate to the Petitioner in the production department and the Petitioner is required to supervise and control the activities and examine whether the work is completed in satisfactory manner and in keeping with the specifications, and that the Petitioner was vested with the power to indent material and the documentary evidence in the

form of purchase orders are produced on record. There is no cross-examination on this aspect and the evidence goes uncontroverted. This Court in ***Union Carbide (India) Ltd (supra)*** has held that supervisor must be distinguished from manager inasmuch as the supervisor had no power to command others to do a particular work; his function is to see that the work was done in accordance with the norms laid down by the management. In my view, the essence of supervision is consisted of overseeing by one person, the work of others, which in the present case is evident from the deposition of witness for Respondent No 1.

34. Considering the deposition of the witness for Respondent No.1, in my opinion, it is established that the Petitioner was engaged as a supervisor in Respondent No.1-company and the admitted position being that salary of the Petitioner exceeded Rs.10,000/ per mensem, the Petitioner stood excluded from the definition of workman.

35. It is the submission of learned counsel for the Petitioner that the petitioner was not carrying out the duties of managerial nature, and as such, the salary of the Petitioner is of

no consequence. In other words, learned counsel for the petitioner has called upon this Court to read word "or" occurring in sub-clause (iv) of section 2(s) as "and". This issue is no longer *res integra* and has been decided by this Court in the case of ***Union Carbide (India) Ltd (supra)*** wherein this Court held that the section is clearly worded and it is not possible to read the underlined word "or" as "and". Sub-clause (iv) of section 2(s) must be split into two distinct parts:-- (i) who being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem; or (ii) 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. It was held that the two contingencies are independent of each other and the two clauses must therefore, be read disjunctively and not conjunctively.

36. Another aspect which tilts the scales in favour of Respondent No.1 is that admittedly the Petitioner is not a member of Respondent No.2-Union. It has also come in evidence that the benefits of wage settlements are given to the workers and not to the managers, supervisors and Officers. Complainant No.5 has admitted that he was in receipt of

regular increments. The Petitioner has joined the services of Respondent No.1-Company in the year 2005 and was not a member of the Union. It can be noted that all permanent workmen were members of the Union and were in receipt of the benefits of wage settlements.

37. The Industrial Court on the basis of evidence on record has observed that since the date of appointment, the petitioner was serving as supervisor. It held that it is an admitted position that none of the complainants were actually doing the job, which is done by the workmen but were supervising the work of the workmen, who were subordinates and their signatures were required along with concerned workmen on the requisition slip of raw material and also on production reports.

38. Considering the evidence, Industrial Court held that it is the duty of the complainants to get the work done from the workers and to lead the workers. The Industrial Court has also taken into consideration that settlement was arrived at between Respondent No.1 and Respondent No.2 and the benefits arising out of settlement are extended to the

permanent workers but not to the managers or supervisors who are receiving annual wage rise from time to time.

39. The Industrial Court after considering the evidence of complainant No.5, has held that the cross-examination reveals that the complainants were supervising the work of workmen and their signatures were required along with concerned workman on the requisition slip of raw material and also on production reports. It was held that none of the complainants is working in place of a workman, if on a given day such workman is absent.

40. In exercise of powers of judicial review, this Court is not expected to appreciate the evidence on record as an appellate court but is bound to interfere in the event the findings are vitiated either by reason of non application of mind or perversity in the approach. Considering the evidence on record, in my opinion, the findings of the Industrial Court do not deserve any interference.

41. As regards the decisions relied upon by the Petitioner, the Petitioner has pressed into service the decision

of this Court in ***Chandrashekhar Chintaman Vaidya (supra)*** to support his contention that it is the nature of duties which has to be considered. There is no quarrel with this proposition. However, in the present case, the Petitioner has failed to establish the nature of his duties to substantiate that the work carried out by the Petitioner was technical in nature.

42. As regards the decision in ***Devinder Singh vs Municipal Council (supra)***, the Apex Court in that decision has held that the source of employment, the method of recruitment, the terms and condition of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act of 1947. The facts of that case are distinguishable inasmuch as the Apex Court was dealing with the case of employee engaged in clerical work. The aspect of salary assumes importance in case of employee carrying out the supervisory work, as the salary in excess of the prescribed limit takes the employee out of the purview of definition of workman. In my view, the decisions relied upon by the Petitioner do not assist the case of the Petitioner.

43. The above discussion would show that on the basis of evidence adduced before the Industrial Court, no other conclusion was possible save and except that the Petitioner was not a workman within the meaning of Section 2(s) of the Act of 1947. The evidence adduced by the Petitioner fails to establish that the Petitioner was carrying out the technical work or that the Petitioner was not carrying out managerial or administrative functions. However, for the purpose of falling within the definition of workman, the employee has to prove that he falls within the substantive portion and it is not sufficient that he does not fall within the exclusionary portion. On the other hand, the evidence of Respondent No.1 establishes that the Petitioner was engaged as supervisor and his salary was exceeding the permissible limit. The Petitioner, thus, was outside the purview of the definition of workmen within the scope of Section 2(s) of the Act of 1947, and the complaint was not maintainable. As such there is no infirmity in the impugned order dated 19<sup>th</sup> July 2014. For that reason, petition fails.

44. It is made clear that the discussion above is

confined to the case of Petitioner who is complainant No.4 in Complaint ULP No.75 of 2012 and as such this Court has not examined the issue as regard other complainants.

45. For the reasons above, petition is devoid of merits and stands dismissed.

**[SHARMILA U. DESHMUKH, J. ]**