

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8227 OF 2018

- 1 M/S. ION EXCHANGE (INDIA) LIMITED,
PLOT NO.2, SECTOR NO.18,
VASHI, NAVI MUMBAI,
VASHI (NEAR KANDA BATATA MARKET)
- 2 Y.N. DESHPANDE
DIVISIONAL MANAGER – PERSONNEL & ADMN.
M/S. ION EXCHANGE (INDIA) LIMITED,
PLOT NO.2, SECTOR NO.18,
VASHI, NAVI MUMBAI,
VASHI (NEAR KANDA BATATA MARKET)PETITIONERS

V/S

RAJESH P. SALVI
9, USHA SAPNA, 21-A, MAHANT ROAD,
VILE PARLE – EAST, MUMBAI – 400 057.RESPONDENT

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Mr. V.P. Vaidya i/b Mr. P.C. Pavaskar for Petitioner-Company.
Ms. Nivedita S. Deshpande i/b Mr. S.N. Deshpande for Respondent.

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CORAM : **SANDEEP V. MARNE, J.**
RESERVED ON : **SEPTEMBER 05, 2023.**
PRONOUNCED ON: **SEPTEMBER 13, 2023.**

JUDGMENT:

1 By this Petition, Petitioning-Company challenges order dated 21 April 2012 passed by Labour Court in Complaint (ULP) No.102 of 2021 as well as order dated 29 September 2017 passed by the Industrial Court

in Revision Application No.72 of 2012. The Labour Court has allowed Respondent's Complaint and has directed his reinstatement with full back-wages, continuity of service and statutory benefits with effect from 28 December 2000. The Industrial Court has rejected the Revision Application preferred by Petitioning-Company.

2 Facts in brief are that, Petitioner is a Company engaged in the business of supplying water and waste water treatment plants and undertakes installation of water treatment plants at various locations including factories, residential complexes, etc. Respondent was appointed as 'Field Services Officer-Commissioning' by letter dated 14 November 1995. His services were initially placed on probation and he was confirmed in service vide letter dated 15 May 1996. He was further promoted to the higher grade viz. Grade VIII in the management cadre with effect from 1 January 2000. Respondent's salary subsequently was revised by letter dated 11 April 2000.

3 Respondent was terminated by Petitioning-Company by letter dated 27 December 2000. Respondent filed Complaint (ULP) No.102 of 2000 before Labour Court under section 28 read with item 1(a)(b)(d) and (f) of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**) challenging his termination. Petitioning-Company opposed the Complaint by filing Affidavit-in-Reply dated 28 March 2001 raising various defences, including the defence of Respondent not being a

workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 (**ID Act**). Parties led evidence in support of their respective cases. The Labour Court proceeded to pass judgment and order dated 21 April 2012 allowing Respondent's Complaint and holding that Petitioning-Company indulged in unfair labour practices under item 1(a) (b)(d) and (f) of Schedule IV of MRTP & PULP Act. The Petitioning-Company was directed to reinstate Respondent in service with full back-wages and continuity of service and to pay him all statutory benefits with effect from 28 December 2000.

4 Petitioning-Company filed Revision Application (ULP) No.72 of 2012 challenging the decision of the Labour Court before the Industrial Court. The Industrial Court however has rejected the Petitioning-Companies' Revision Application by judgment and order dated 29 August 2017. Petitioning-Company is accordingly aggrieved by the decisions of the Labour Court and Industrial Court and has filed the present Petition.

5 Appearing for Petitioning-Company, Mr. Vaidya, the learned counsel would submit that Respondent was admittedly performing supervisory job and could not be treated as a workman. That Respondent was engaged in execution of various projects of installation of plants for Petitioning-Company and therefore cannot be treated as a workman. He would invite my attention to the self-appraisal report of Petitioning-Company for the year ending April 1988 to demonstrate that Petitioning-Company was responsible for erection and commissioning of plants at

various entities. That since Respondent claimed the credit for setting up and commissioning of the entire project, he could not have claim himself as a workman engaged in doing manual job. He would further submit that Respondent admitted in his evidence that he used to supervise the job of labourers. He would also rely upon evidence of immediate superior of Respondent stating that Respondent was a Field Officer responsible for commissioning of plants and that he was a site incharge and used to supervise other workers. Mr. Vaidya would therefore submit that in the light of the evidence appearing on record, the Labour Court erred in holding that Respondent was engaged in manual work. He would further submit that the Labour Court itself has arrived at a conclusion in para 30 of its judgment that Respondent was working as “Field Staff Category Environmental Engineer”. That Engineer cannot be stated to be performing manual job. He would therefore submit that the findings recorded by the Labour Court are clearly perverse. Mr. Vaidya would then invite my attention to the judgment of the Industrial Court, which according to him, failed to correct the error committed by the Labour Court. That the Industrial Court also erred in arriving at a conclusion that the nature of work performed by Respondent was technical in nature and that therefore he is a workman under section 2(s) of the ID Act. He would therefore pray for setting aside orders of the Labour Court and Industrial Court.

6 *Per contra*, Ms. Nivedita Deshpande, the learned Counsel appearing for Respondent would oppose the Petition and support the orders passed

by Labour Court and Industrial Court. She would submit that Respondent was supervising the work not of Petitioning-Company's employee but of contractors. That mere supervision of contractors' workers would not convert the nature of job of Respondent to that of a supervisor. That both Labour and Industrial Courts have recorded a finding of fact that Respondent was performing manual duties, which were technical in nature. She invited my attention to the evidence led before the Labour Court. She would submit that Respondent used to merely give technical advice to the contractors and their workers. She would submit that even the management witness was unable to give any evidence about the exact nature of Respondent's duties.

7 Ms. Deshpande would submit that there is ample evidence on record to suggest that Respondent was engaged in manual work of technical nature. Even if it is assumed that the Petitioning-Company was able to prove before the Labour Court that Respondent occasionally performed supervisory work, the manual work being paramount in nature, the same would determine Respondent's status as "workman". In support of her contention, Ms. Deshpande would rely upon judgment of the Apex Court in ***Arkal Govind Raj Rao vs. Ciba Geigy of India Ltd., Bombay*** AIR 1985 SC 985. Relying on judgment of this Court in ***Ichalkaranjee Municipal Council vs. Pravin Shivgonda Patil & Anr.***, 2010 III CLR 466, she would contend that mere supervision over quality of work would not make Respondent a supervisor within the meaning of section 2(s) of the ID Act. She would pray for dismissal of the Petition.

8 After having considered the submissions canvassed by the learned counsels appearing for the parties, the short issue that arises for my consideration is whether the Respondent can be considered as “workman” within the meaning of section 2(s) of the ID Act. Before Labour and Industrial Courts also, this was the main issue, which was contested between the parties.

9. The term “workman” has been defined in clause (s) of section 2 of the ID Act 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.”*

10 The Petitioning-Company has attempted to prove before the Labour Court that Respondent was engaged mainly in supervisory capacity. The Labour Court on the other hand has held that Respondent was performing manual job of technical nature and was not a supervisor.

11 It has been proved before the Labour Court that Respondent, while performing his duties, used to supervise the workers of contractors. It is this nature of duty which is sought to be highlighted by the Petitioning-Company in support of its contention that he is not covered by definition of the term “workman”. However, perusal of the entire evidence on record would show that Respondent was not supervising any of the employees of the Petitioning-Company. What he was doing at the sites was to supervise the works performed by the contractors’ workers. Mere supervision of works of contract labourers would not convert Respondent into a supervisor within the meaning of section 2(s) of the ID Act. In this connection reliance of Ms. Deshpande on the judgment of this Court in *Ichalkaranji Municipal Council* (supra) is apposite, in which it is held as under:

“11. ... The evidence led by the petitioner also does not controvert the respondent’s contention about the nature of work that he was performing. The Industrial Court has concluded that the work of the respondent was technical in nature inasmuch as he was expected to oversee whether the quality of material used for the construction works undertaken within the municipal limits was upto the specified requirements. This kind of work cannot by any stretch of imagination be termed as supervisory. It is not the petitioner’s case that the respondent was supervising men or the work done by others. The mere fact that he had to ensure that the quality of the work was good or as per the specifications would not necessarily mean that he was a supervisor within the meaning of section 2(s) of the Industrial Disputes

Act. The nature of the work that he was performing indicates that it was technical and therefore, he was a workman u/s 2(s) of the Industrial Disputes Act and, consequently, an employee u/s 3(5) of the MRTU & PULP Act. ...

... .. “

12 Thus merely because Respondent was deputed at sites to supervise execution of projects and while doing so, he exercised supervision over workers of contractors, would not make him a supervisor.

13 Mr. Vaidya's reliance on self-appraisal reports would not make case of Petitioning-Company any better. The self-appraisal reports do not throw any light about the exact nature of duties performed by Respondent. He may have taken part in setting up of various projects, however the same would not make him a manager or supervisor. Considering the evidence on record, the Labour Court has arrived at a finding that Respondent was engaged in manual work.

14 The Petitioning-Company did not lead any evidence to prove that Respondent supervised any of its employees. Since such supervision over Petitioner-Company's employees was neither pleaded nor proved, it essentially relied upon supervision by Respondent over contract workers. I fail to comprehend as to how Respondent, while doing in employment of Petitioning-Company, could supervise workers of contractor. What he must have supervised is the work of the contractors' workers. Contractors' workers were not responsible or answerable to Respondent. He may have given them some instructions for proper

execution of the work. However, he did not have any control over those workers relating to their service conditions. Therefore, merely because Respondent supervised execution of work by contractors through their workers, the same would not *ipso facto* make Respondent a supervisor in any manner. To make out a clear case of Respondent being supervisor, Petitioning-Company ought to have led direct evidence to show that Respondent supervised any of its employees. The fact that the Petitioning-Company did not make any attempt to prove so, would clearly indicate that Respondent actually did not supervise any of the employees of Petitioning-Company.

15 For deciding whether Respondent was engaged in supervisory duties, his designation would not be of much relevance. It appears that Respondent has been given various designations such as “Commissioning Field Officer”, “Field Staff Category Environmental Engineer” etc. Petitioning-Company ought to have proved before the Labour Court that Respondent performed duties of a manager or supervisor.

16 In ***Arkal Govind Raj Rao*** (supra) the Apex Court has held that where an employee has multifarious duties and when a question is raised whether he is a workman or not, the Court must find out what are the primary and basic duties of the person concerned and mere performance of incidental duties which may not be in tune with basic duties, the same would not change the character and status of the person concerned. It is held in paras 6 and 8 as under:

"6. Where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person. Appreciation of evidence by Labour Court cannot be faulted but it landed itself into an erroneous conclusion by drawing impermissible inference from the evidence and overlooking the primary requirement of the principal and subsidiary duties of the appellant."

8. The Labour Court then took note of the fact that in 1966 appellant was promoted as Assistant and that he was designated as Group Leader. Ex. 16/6 was referred to as specifying the duties of the Group Leader of Group II. The Court concluded that the aforementioned document would show that the appellant was a Group Leader and that he accepted that position by putting his initials on the document. The inference drawn by the Court from this document is that the work of Group Leader is undoubtedly mainly supervisory though he is also required to work himself. However, in the view of the Labour Court at this stage the duty of the appellant became primarily supervisory. While it is true that the Appellant was working as Group Leader and, therefore, over and above his work he also supervised the work of persons working in his group, it is erroneous to draw the inference that his duties became mainly supervisory. The definition of the expression workman hereinbefore extracted clearly shows that the person concerned would not cease to be a workman if he performs some supervisory duties but he must be a person who must be engaged in a supervisory capacity. Even as a Group Leader of Group II, the evidence produced would show that primarily he continued to work and perform the same duties which have been found to be clerical but along with others in the group he also incidentally looked after the work of other members of the group who were only two in number. It is, therefore, not possible to concur with the inference drawn by the Labour Court contrary to the record that while functioning as Group Leader of Group II, even though appellant was performing his clerical duty the incidental supervisory duties performed by him would make the appellant a person employed in supervisory capacity. Let it be recalled that in Group II over and above the appellant, there were only two other persons, namely, Shri Swami and Shri Sawant. The distinction drawn between the duties performed by Swami and Sawant and that of the appellant was that as Group Leader the appellant was to ensure that the work allotted to the Group is completed within the scheduled time. In other words, work distribution among three persons of a clerical nature would not cease to be clerical because one of the three is asked to see that all the three of them performed the duties efficiently

to complete the task. The Labour Court completely misled itself and observed that since then the duties of the appellant became supervisory.”

17 In the present case, Respondent proved that his primary and basic duties were manual and technical in nature. It was Petitioning-Company's defence that he was engaged in managerial and supervisory job. However Petitioning-Company failed to prove its defence. In such circumstances, the finding recorded by Labour Court and Industrial Court in holding Respondent as a 'workman' under section 2(s) of the ID Act and consequently an 'employee' under section 3(5) of the MRTU and PULP Act cannot be faulted. Even otherwise, there are concurrent findings of fact about the nature of duties performed by Respondent and this Court would be loathe to interfere in the same in absence of any case of perversity being made out by Petitioning-Company.

18 Except the point of Respondent's status as 'workman', no other point is argued before me. Since I have not found any error in finding recorded by Labour Court and Industrial Court about Respondent's status as 'workman', the present Petition must meet the fate of dismissal.

19 The Writ Petition is accordingly dismissed without any orders as to costs.

(SANDEEP V. MARNE, J.)