

The Bhatiya General Hospital and Another	...Petitioners
vs.	
Hanmant Anandrao Raje and Others	...Respondents

Mr. Anand Pai a/w. Mr. Omar Shaikh, for the Petitioners.
Mr. S.C. Naidu a/w. Mr. Manoj Gujar, Mr. T.R. Yadav, Mrs. Divya Yajurvedi and Mr. Pradeep Kumar i/b. C.R. Naidu & Co, for the Respondents.

CORAM : N. J. JAMADAR, J.
RESERVED ON : MARCH 30, 2023
PRONOUNCED ON : JUNE 5, 2023

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for the parties, heard finally at the stage of admission.

2. This petition under Article 226 of the Constitution of India assails the judgment and order dated 21st January, 2022 passed by the learned Member, Industrial Court at Mumbai in Complaint (ULP) No. 366 of 2018 whereby the learned Member was persuaded to hold and declare that the petitioners/ employers engaged in unfair labour practices under Items 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of

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Unfair Labour Practices Act, 1971 (the Act, 1971) and direct the petitioners to cease and desist from engaging in unfair labour practices and quash and set aside the letter dated 28th July, 2018 and email dated 30th July, 2018 and the consequent action and also direct the petitioners to grant medical and monetary benefits as well as leave facilities which the respondents/ complainants were enjoying prior to August, 2018 and extend the same service conditions which the respondents/ complainants were enjoying before they were sought to be changed by the communications which were quashed and set aside.

3. Shorn of unnecessary details, the background facts leading to this petition can be stated as under:-

a) Petitioner No. 1 is a general hospital run by a public charitable trust. Petitioner No. 2 is the Chief Executive Officer of petitioner No. 1. Respondent Nos. 1 to 6/ original complainants are the permanent employees of the petitioner No.1.

b) Respondents were appointed in different capacities in different departments of petitioner No. 1, initially in the capacity of, “workman” as defined under section 2(s) of the Industrial Disputes Act, 1947 (the Act, 1947). They have rendered services in the range of 15 to 30 years. They were the members of “Bhatia General

Employees Union”, a registered trade union.

c} In the year 2008-09 the respondents were, according to the petitioners, promoted to the managerial cadre. Respondent No. 1 Hanamant Raje was promoted as Jr. Patient Welfare Officer. Respondent No. 2 Anjana Phade and No. 4 Vidhya Pawar were promoted as Technical Supervisor- Blood Bank and Jr. Technical Supervisor- Blood Bank, respectively, and respondent No. 3 Jyoti Boricha, No. 5 Jasmine Karol and No. 6 Rajshree Divekar as Technical Supervisor-Laboratory.

d} It is the case of the petitioners that on the establishment of the petitioner No. 1 there are grades of employees. Employees up to grade F are the members of the union. Their service conditions are governed by settlements entered into between the employer and the union, from time to time. The employees who are placed in the managerial cadre and the technical supervisors are governed by separate service conditions determined by the management. Post promotion, the respondents came to be placed in L1 grade.

e} Despite the promotion in the year 2008-09 and a subsequent promotion to L2 grade and consequent higher pay scale, the respondents were inadvertently extended the benefits which were available to the workman, like unlimited medical benefits, leave travel allowances, 30 days of privilege leave, 12 days of casual leave

and 15 days sick leave, which the managerial cadre officers were not entitled to. When the said inadvertent mistake was realized, the petitioners addressed a letter dated 28th July, 2018 to the respondents and 14 other persons so as to bring emoluments and benefits at par with rest of the officers and managers. Barring the respondents, rests of the officers/managers accepted the revised dispensation. However, the respondents filed a complaint of unfair labour practices.

4. The substance of the complaint of the respondents/complainants was that despite the promotion, nature of work performed by them prior to and after the purported promotion remained the same. They continued to perform the duties of technical and operational nature. Their duties had no trappings of supervisory control or managerial cadre. All the complainants fell under the category of 'workman' as defined under section 2(s) of the Act, 1947 or 'Employee' as defined under section 3(5) of the Act, 1971. By the impugned communication the employer professed to adversely and drastically alter the service conditions and benefits to which they were entitled to. There was no notice of the change in the service conditions. Thus, the action of the employer to deprive the respondents of the benefits to which they were entitled

to as workman amounted to partiality within the meaning of Item 5 and also constituted failure to implement the settlement under Item 9 and an act of force or violence within the meaning of Item 10 of the Schedule IV of the Act, 1971.

5. The employers/petitioners resisted the complaint. It was inter alia contended that though the respondents were initially appointed in the workman category, post promotion, the respondents were working in a supervisory, administrative and managerial cadre. Thus, the respondents were not workman. Resultantly, they were not covered by the settlements which the employer had entered with the union. The respondents were getting the benefits under the settlements while they were working in the workman category. However, in the wake of the promotion, the respondents voluntarily resigned from the membership of the union and since then they have been working in supervisory, administrative and managerial cadre. It was thus contended that the complaint of unfair labour practices under the Act, 1971 was not tenable. Even otherwise, the petitioners denied that there was unfair labour practice.

6. By the impugned communication, according to the petitioners

an endeavour was made to correct an inadvertent mistake. The said action did not amount to any adverse change in the conditions of services. It was contended that in the promotion order inadvertently an error had crept in providing that “all other terms and conditions shall remain the same”. This led to continuation of the benefits, which the workman were entitled to. Therefore, it cannot be said that the petitioners had indulged in unfair labour practices.

7. It would be contextually relevant to note that the learned Member, Industrial Court had granted interim relief staying the execution and operation of the impugned communication. Writ Petition No. 13165 of 2019 preferred by the petitioners came to be disposed of by an order dated 18th February, 2020 by directing the Industrial Court to hear and dispose of the Complaint (ULP) No. 336 of 2018, expeditiously.

8. The learned Member, Industrial Court recorded the evidence of respondent/complainant No. 2 Anjana Phadke (Exh.U-17) for the complainants and Dr. Sunita Nair (Exh.C-22) and Dinesh Thombare (Exh.C-80) for the employers. After appraisal of the rival contentions, evidence and material on record, the learned Member

was persuaded to return the finding that the complainants were covered by the definition of “workman” under section 2(s) of the Act, 1947 and “Employee” under section 3(5) of the Act, 1971 and that the petitioners committed unfair labour practices under Items 5, 9 and 10 of Schedule IV of the Act, 1971 and gave directions, as indicated above. Being aggrieved, the petitioners have again invoked the writ jurisdiction of this Court.

9. I have heard Mr. Anand Pai, learned counsel for the petitioners and Mr. S.C. Naidu, learned counsel for the respondents at some length. The learned counsel for the parties took the Court through the pleadings, deposition of the witnesses and the material on record, including the impugned order.

10. Mr. Pai, learned counsel for the petitioners strenuously submitted that the learned Member, Industrial Court misdirected himself in holding that the complainants were the workman. Mr. Pai submitted that the question as to whether a person is workman is a mixed question of fact and law and that determination being jurisdictional in nature, is amenable to judicial review under Article 226 and 227 of the Constitution of India. As a second limb of this submission, Mr. Pai would urge that the learned Member, Industrial

Court lost sight of the fact that the onus to establish that the complainants were the workman was not at all discharged by the respondents/complainants. According to Mr. Pai, the learned Member did not properly appreciate the evidence tendered before the Court which unmistakably indicated that the respondents/complainants were holding supervisory and managerial posts. The duty list which were duly tendered and proved were unjustifiably discarded by the learned Member. Therefore, the impugned judgment and order deserves to be interfered with in exercise of writ jurisdiction, submitted Mr. Pai.

11. To bolster up the aforesaid submissions Mr. Pai placed reliance on the judgments in the cases of Somnath Tulshiram Galande vs. Presiding Officer, IInd Labour Court, Pune and Others¹ and H.R. Adyanthaya and Others vs. Sandoz (India) Ltd. & Ors.²

12. Per contra, Mr. Naidu, learned counsel for the respondents would urge that the impugned order does not warrant any interference in exercise of the extra ordinary jurisdiction. Laying emphasis on the contours of the writ jurisdiction, Mr. Naidu would submit that the Court in exercise of writ jurisdiction is more

1 2008(4) Mh.L.J. 163.

2 (1994) 5 Supreme Court Cases 737.

concerned with the decision making process rather than the merits of the decision. In the case at hand, according to Mr. Naidu, the learned Member, Industrial Court has arrived at a justifiable conclusion that the respondents satisfy the description of workman upon appreciation of oral and documentary evidence. Such a finding can, by no stretch of imagination, be termed as perverse and thus needs no interference in exercise of writ jurisdiction. In any event, according to Mr. Naidu, the burden to establish that the respondents were not workman, was on the petitioners/ employers and they miserably failed to discharge the said burden. Therefore, looked at from any perspective, the impugned order is wholly justifiable. To demonstrate the limits of the writ jurisdiction, Mr. Naidu placed reliance on the judgment of the Supreme Court in the case of State of Andhra Pradesh vs. P.V. Hanumantha Rao (Dead) Thr. L.Rs and Anr.³.

13. Mr. Naidu would further urge that the case sought to be put forth on behalf of the petitioners that the respondents were working in a supervisory capacity was omnibus, in the least. A bald contention was raised that the respondents were working in supervisory managerial and administrative capacities without reference to any duty list much less any effort at substantiating

3 AIR 2004 Supreme Court 627.

those attributes. Mr. Naidu would urge that exclusions envisaged by sub-clauses (iii) (iv) of clause (s) of section 2 cover distinct capacities and the expression managerial or administrative or supervisory are not inter changeable much less of one and the same nature.

14. To lend support to the submission that burden rests on the employer to establish that a person is not workman, reliance was sought to be placed on a Division Bench judgment of this Court in the case of Waman Ganpat Raut vs. Cadbury-Fry (India) Pvt. Ltd.⁴. Reliance was also placed on a judgment of learned single Judge of this Court in Aloysius Nunes vs. Thomas Cook India Ltd.⁵.

15. Mr. Naidu also placed reliance on the judgments in the cases of Rallis India Ltd. vs. State of West Bengal and Others⁶; Electronics Corporation of India Ltd. Service Engineers Union vs. Electronics Corporation of India Ltd. And Another⁷, and Northcote Nursing Home Pvt. Ltd and Another vs. Zarine H. Rahina (Dr. Ms.) & Another⁸ and the judgment of the Supreme Court in the case of All India Reserve Bank Employees' Association and Another vs.

4 Sp.Civil Application No.3410/1976, Dt. 13/03/1980.

5 2000 II CLR 469.

6 1983 II LLJ, 293.

7 2004 III LLJ, 971.

8 2001(Supp.) Bom. C.R. 619.

Reserve Bank of India and Another⁹.

16. The definition of “workman” under section 2(s) of the Industrial Disputes Act, 1947 is of wide amplitude. Four classes of employees are, however, specifically excluded from the definition of workman. An employee who is employed mainly in a managerial or administrative capacity or the one who is employed in a supervisory capacity, draws wages exceeding Rs. 10,000/- per month 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 is, inter alia, excluded from the definition of workman. The use of the term, “mainly” underscores the dominant nature of the duty so as to fall outside the protective umbrella of the labour legislation. By its very nature, the question as to whether an employee is a workman or not is rooted in facts.

17. In the case of **All India Reserve Bank Employees’ Association** (supra), the Supreme Court enunciated that whether a particular workman is a supervisor within or without the definition of ‘workman’ is ultimately a question of fact, at best one of mixed fact and law and will really depend upon the nature of the industry, the type of work in which he is engaged, the organisational set-up of the

⁹ AIR 1966 Supreme Court 305.

particular unit of industry and like factor.

18. This being the nature of the definition of workman, the nomenclature of the post held by an employee is not of decisive significance. It is the nature of the duty and not the nomenclature of the position that matters. Whether the overall consideration of the duties performed by the employee satisfies the description of the duties being either supervisory or mainly managerial nature, is the question to be posed.

19. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **S.K. Maini vs. M/s. Carona Sahu Co. Ltd.**¹⁰ wherein it was inter alia, observed as under:-

9] “After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2 (s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any straitjacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2 (s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or

¹⁰ (1994) 3 SCC 510.

commercial organisations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it”

“... the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as Section 2 (s) of the Industrial Disputes Act.”

(emphasis supplied)

20. Reverting to the facts of the case, in the light of the aforesaid position in law, the thrust of the case of the employer was that the respondent N. 1 post promotion was re-designated as Jr. Patient Welfare Officer and respondent Nos. 2 to 6 as Technical Supervisors. Mr. Pai, made painstaking effort to take the Court through the duty list of each of the respondents to draw home the point that some of the duties were predominately of supervisory or managerial nature.

21. I have carefully perused the duty lists. I find it rather difficult

to agree with the submission on behalf of the petitioners that the predominant nature of the duties performed by any of the respondents was of managerial nature.

22. First and foremost, the description of the duties is of general nature. For example primary duty of Hanmant Raje, as Jr. Patient Welfare Officer, was to meet the patients and their attendants personally and to take their feedback. To this end, it was further provided in the duty list that Raje was to ensure that processes are “customer centric” and that he was to update the Reporting Officer on all the day to day problems and their resolution. I am afraid, the use of management jargon in the duty list is of assistance in demonstrating that the nature of duties performed by Raje was of managerial nature. The duties were plainly of operational nature in the sense that he was to meet the patients and their relatives and attend to their grievances and nothing more.

23. What weighed with the learned Member, Industrial Court was the fact that Hanmant Raje, respondent No. 1, was to report to Ms. Shweta Rane, the Senior Patient Welfare Officer. Ms. Rane was, in turn, shown in the workman category.

24. Dr. Sunita Nair conceded in the cross examination in no uncertain terms that vide letter dated 20th April, 2017, Hanmant Raje stood re-designated as Jr. Patient Welfare Officer and his reporting authority was to be Ms. Shweta Rane and that the later falls under the workman category. A feeble attempt was made to wriggle out of the situation by affirming that the designation of Ms. Rane was not changed as she was not having the requisite qualification.

25. The aforesaid circumstance singularly dismantles the employer's case that Mr. Raje performed supervisory or managerial duties. The person to whom Hanmant Raje was to report, as a superior to him, was in the workman category. It does not stand to reason that the reporting employee, in such a situation like this, can be said it to be performing supervisory duties.

26. The designation of respondent Nos. 2 to 6 as Technical Supervisor is also not of much assistance to advance the cause of the employer. I have perused the duty list of Lab Technical Supervisor and Hematology Technical Supervisor. Primary duty of the employees, who were to man those positions, was to accept the samples, prepare reports and maintain the record. Tucking in the

duties like, take over responsibility of department and sign the reports, on Sundays and public holidays do not change the primary duties which were essentially of the technicians.

27. To add to this, it is pertinent to note that when the respondents 2 to 6 were promoted to Technical Supervisors, apart from the change in the basic salary and the level in the hierarchy of the employees maintained by the employer, it was categorically mentioned that all other terms and conditions shall remain the same as per the initial appointment (indisputably in the category of workman). Inadvertent mistake in extending the said benefits seem to have dawned after almost nine years.

28. It is in this context, the evidence of Ms. Anjana Phadake deserves to be evaluated. It was categorically asserted that they were performing the same duties which they used to perform before the promotion. She further asserted that Shweta Rane who was working as a Patient Welfare Officer was at the same level as complainant No. 1 and was receiving benefits as per settlement. Mr. Bhupendra Upadhyay was working as Senior Technical Supervisor and received all the benefits as per the settlement. Ruchita Patole, who was working in L1, was also receiving all the benefits as per the

settlement. Likewise, Mahadev Thombare, who was categorized in L1 due to seniority and promotion, still continued to get the benefits as per the settlement and thus the employers were showing favoritism and partiality to one set of workers vis-a-vis the complainants.

29. Nothing material could be elicited to discard the version of Anjana Phadake. On the contrary, during her cross examination, Dr. Sunita Nair, conceded in no uncertain terms that Bhupendra Upadhyay, Ruchita Patole, Shweta Rane are all designated under the workman category. She went on to concede unequivocally that the complainants do not sanction leave of any subordinate employees, they do not have power to appoint or dismiss the employee, they do not have powers to recommend pay hikes of any of the employees and they do not write service book or service related documents of the employees. They don't have independent office.

30. In the backdrop of the aforesaid evidence, the learned Member, Industrial Court recorded a finding that there was nothing on record to show that the work performed by any of the complainants was of such a nature as to bind the petitioners to

some kind of decisions on behalf of the hospital. Nor there was material to show that any of the complainants had power to direct or oversee the work of any subordinate. Nor they had the authority to exercise the supervisory control in the nature of grant of leave, appraise actual performance etc.

31. The aforesaid view of the learned Member, Industrial Court appears fully justifiable. On the one hand, the material on record indicates that all the complainants/ respondents performed technical or operational duties. On the other hand, none of the duties performed by any of the complainants/ respondents had the attributes of supervisory character. To add to this, the persons who were shown to be either superior or equivalent to the respondents were categorized in workman category.

32. Mr. Pai attempted to salvage the position by canvassing a submission that Ms. Phadake had no authority to lead evidence on behalf of rest of the complainants. This challenge does not merit countenance. It would be suffice to note that the manner in which Dr. Sunita Nair fared in the cross examination dismantled the very substratum of the petitioners' case that the respondents/ complainants were not the workman.

33. The conspectus of the aforesaid consideration is that the petitioners could not succeed in demonstrating that the main duties discharged by the complainants/ respondents were supervisory and managerial, they had the authority to take decision and bind the petitioners and also supervise the work of the officials subordinate to them.

34. Once, this finding of fact recorded by the learned Member, Industrial Court is found to be justifiable, the inference of unfair labour practices is a matter of necessary corollary as the complainants were deprived of the benefit of the settlement which was extended to similarly circumstanced employees categorized as workman.

35. The endeavour of Mr. Pai to bank upon the categorization and grading of employees, on the establishment of petitioner No. 1, is required to be stated to be repelled as that is of no consequence, for what matters is the nature of the duty and not designation or categorization by the employer.

36. For the foregoing reasons, no case for interference in exercise of writ jurisdiction is made out.

Hence, the following order.

ORDER

- 1] The petition stands dismissed.
- 2] Rule discharged.
- 3] In the circumstances, there shall be no order as to costs.
- 4] The Interim Application(s), if any, stand(s) disposed.

(N. J. JAMADAR, J.)