



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 5971 OF 2022

Indorama Synthetic (I) Ltd.
A-31, MIDC Industrial Area,
Butibori, District Nagpur. Through
its Vice-President (Finance & Accounts)

...Petitioner

// VERSUS //

1. Ms. Ujwala d/o. Dattraya Deshpande,
178, Harsh Residency,
Nelco Society, Subhash Nagar,
Nagpur 440 022
2. Member, Industrial Court, Nagpur, Temple
Road, Civil Lines, Nagpur 440 001
3. Third Labour Court, Nagpur, Temple Road,
Civil Lines, Nagpur 440 001

... Respondents

Shri R.B. Puranik, Advocate for the petitioner.
Shri S.D. Thakur, Advocate for the respondent no. 1.
Shri D.P. Thakare, Addl.GP for the respondent nos. 2 & 3/State.

CORAM : ANIL S. KILOR, J.
DATED : 7th OCTOBER, 2023.

ORAL JUDGMENT :

The judgment and order dated 1.4.2022, passed by the Industrial Court No. 3, Nagpur in B.I.R. Appeal No. 1/2016, arising out of the judgment and order dated 29.6.2016, passed by the 3rd Labour Court in B.I.R. Case No. 10/2009 is under challenge in this writ petition.

2. Both the Courts below have held in favour of the respondent while setting aside the termination of the respondent directing to reinstate the

respondent. The whole controversy involved in this matter relates to a question whether the respondent is an employee under Section 3(13) of the Maharashtra Industrial Relations Act, 1946 ("Act", for short).

3. The respondent was appointed as Trainee Chemist on 16.11.1995, and after undergoing one years training, she was appointed on probation on 31.12.1996 and thereafter, she was confirmed on 31.5.1997. According to the petitioner, she was employed primarily for doing the technical work i.e. to carry out analysis of raw material, and though, subsequently she was transferred to Logistic Department on 29.11.2005, she was given promotion as Senior Chemist maintaining her status as Chemist. It is therefore, submitted that since the respondent was primarily employed for carrying out technical work and admittedly her salary is more than Rs. 6,500/- per month, she cannot be considered and termed as an employee, as such the respondent cannot file any proceeding under the provisions of the Act. It is submitted that both the Courts below have committed an error in not interpreting the provisions of Section 3 sub-section 13 of the Act in just and proper manner.

4. Accordingly, in light of the above submissions, Mr. B.R. Puranik, learned counsel for petitioner submit that both the Courts below have further committed an error in not rightly considering the evidence led by the petitioner and the cross-examination conducted by the petitioner of the respondent No. 1.

5. Mr. S.D. Thakur, learned counsel for respondent No. 1 submit that the evidence led by the respondent No. 1 that she was working in Logistic Department and her work was to take entries in computer was not seriously challenged by the petitioner.

6. It is further submitted that the work, the respondent No.1 was doing or performing prior to her termination is relevant to determine whether she falls under the definition of word 'employee'. It is submitted that as her work was to take entries in computer and since it was not a technical work or managerial work, she cannot said to be excluded from the definition of word 'employee'. It is therefore, submitted that both the Courts below have rightly held in favour of the respondent No.1 that she is an employee and therefore, B.I.R. case filed by her was maintainable.

7. In light of rival contentions, I have perused the record and the impugned judgment and order. Since the controversy revolves around definition 'employee', it would be appropriate to refer to definition word 'employee, which reads thus:

(13) "employee" means any person employed to do any skilled or unskilled work for hire or reward in any industry, and includes -

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14);

(b) a person who has been [dismissed, discharged or retrenched or whose services have been terminated from employment] on account of any dispute relating to change in respect of which a notice is given or an application made

under section 42 whether before or after his [dismissal, discharge, retrenchment or, as the case may be, termination from employment];

[but does not include -

(i) a person employed primarily in a managerial, administrative, supervisory or technical capacity [drawing basic pay (excluding allowances) exceeding [six thousand five hundred rupees per month];]

(ii) any other person or class of persons employed in the same capacity as those specified in clause (i) above irrespective of the amount of the pay drawn by such persons which the State Government may, by notification in the Official Gazette, specify in this behalf;]

It is evident from the definition that a person employed primarily in managerial, administrative or supervisory or technical capacity and who is drawing basic pay excluding allowances existing Rs. 6,500/- per month, is excluded from the definition of 'employee'.

8. In the present matter, the application filed by the respondent No.1 before the Labour Court more particularly paragraph no.1 of the application, shows that it is the case of the respondent No.1 that she joined services w.e.f. 16.11.1995 in the capacity of Trainee Chemist and after confirmation some time in the year 2005, because of her good work, she was promoted as Senior Chemist.

9. On the same lines, she has deposed that she was working in the petitioner company as Trainee Chemist in Quality Control

Department and confirmed as Chemist and thereafter, in 2005. It is further stated that, she was promoted as Sr. Chemist. In the cross-examination, she admitted that water test report Exh. 42 was signed by her. However, she further state that it was carried out by officer and she simply took the noting of the same in the computer and signed as Chemist.

10. The witness of the petitioner, in his evidence, has categorically stated that the respondent 1's job was to analysis the quality parameters and certify whether they are within the permissible limits. He further states that the respondent No. 1 was required to submit report on various process, on regular basis, giving her observations and test report. He further deposed that the respondent No. 1 was doing testing with assistance of various other persons, who used to collect samples and effluent from different location of the plant and the job of respondent No. 1 was to do analysis and prepare analysis report of the samples supplied to her from various departments.

11. During the cross-examination, the witness of the petitioner admits that no documents were filed on record to show that quality control work is to control quality of raw material, intermediary product and final products. He further admits that no documents were filed on record to show that there was any need to perform chemical analysis for the above referred process.

12. However, the question remains whether it is relevant that what duties the employee was performing before termination to consider the second part of the definition 'employee' which exclude certain persons from the definition of employee. The language employed for exclusion refers to the term a person employed primarily in managerial, administrative, supervisory or technical capacity. The provision does not say that the person performing the duties relating to managerial, administrative, supervisory or technical work.

13. In the circumstances, it is apparent that both the Courts below have committed error in interpreting the said provision and in ignoring that primarily the appointment of respondent No.1 was as Chemist.

14. Moreover, from the findings recorded by the Industrial Court, it is evident that the Industrial Court has not considered the cross-examination of the respondent No. 1 in right perspective. In that view of the mater, I am of the opinion that the matter needs to be remanded back to Industrial Court for deciding the same afresh after hearing both the parties. Accordingly, the writ petition is partly allowed.

15. The judgment and order passed by the Industrial Court dated 1.4.2022 is hereby quashed and set aside. The matter is restored back with the Industrial Court. The Industrial Court is directed to decide B.I.R. Case No. 1/2016 afresh after hearing both the parties.

16. All the points are kept open.

17. The learned Industrial Court shall not get influenced by any of the observations made in this order while deciding the matter afresh.

18. The learned Industrial Court is further directed to decide the matter within three months from the date of appearance of the parties.

19. Both the parties are directed to appear before the Industrial Court on 18.10.2023, at 11.00 a.m. Both the parties have undertaken to cooperate the Industrial Court in deciding the matter within the stipulated period.

[ANIL S. KILOR, J.]