



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

924 WRIT PETITION NO. 12954 OF 2023

1. The Maharashtra State Co-operative
Cotton Growers Marketing Federation
Ltd.,
2. The Zonal Manager,
The Maharashtra State Co-operative
Cotton Growers Marketing Federation Ltd.

...Petitioners

VERSUS

Vishnukant s/o Babarao Kadam.

...Respondent

...
Advocate for the Petitioners : Mr. Shelke Shivaji T.
Advocate for Respondent : Mr. V. P. Golewar
...

CORAM : R. M. JOSHI, J.

Dated : June 25, 2024

PER COURT :-

1. Heard. By consent of both sides the petition is heard finally at admission stage.
2. The petitioner Maharashtra State Co-operative Cotton Growers Marketing Federation Limited being aggrieved by the impugned order passed below Exhibit - F in Misc. Application (Delay) ULP No.07/2012 holding that the applicant/respondent herein is workman within the meaning of Section 2 (s) of the Industrial Disputes Act.
3. The record indicates that the respondent filed Complaint ULP under Section 28, 30 of the Unfair Labour Practice read with M.R.T.U.

and P.U.L.P. Act under 5, 9 and 10 of Schedule IV. Since there was delay in filing of the complaint, Misc. Application (Delay) ULP No.07/2022 was filed for condonation thereof. The said application was rejected by the Industrial Court by order dated 02/07/2014. This order was challenged before this Court in Writ Petition No.1870/2015. This Court by order dated 14/07/2015 set aside the said order and directed the Industrial court to frame issue regarding the status of the respondent and his relationship with the petitioner herein. In view of the said direction, issue was framed as to whether the respondent is a workman and there is employer employee relationship between the respondent and the applicant.

4. At the outset, learned Counsel for the petitioners raises objection to the issues framed by the learned Industrial Court. It is his submission that while framing the said issue, the burden is wrongly cast upon petitioners though that the respondent is not a workman. It is his submission that the initial burden lies on the respondent to prove that he is a workman and once he discharges the said burden the onus will be shifted on the petitioners. Though it seems that issue is not framed properly, but it is a matter of record

that the petitioners never raised objection to the issue framed. In fact both parties went ahead to lead evidence before the Industrial Court. The evidence led by both the parties sufficiently demonstrates that they were conscious of the burden to prove issues, which includes issue of workman. The respondent led evidence to support his case and thereafter petitioners stepped in witness box to prove contrary. Parties having gone ahead to lead evidence on the basis of issues and being fully conversant of the real issues involved in the application and burden of proof thereof, this Court finds no reason to cause any interference in impugned order on the ground that the issues are not properly framed/ worded.

5. Learned Counsel for the petitioners by placing reliance on the Judgment of this Court in case of ***Standard Chartered Bank vs. Vandana Joshi and another, reported in 2010 (2) Mh.L.J.,*** submits that the burden lies on the person who asserts the status of a workman under Section 2 (s) of the Industrial Disputes Act and has to establish with reference to the dominant nature of his work that he performs falls within one of the stipulated categories in Section 2(s). It is further observed therein that the fact that an

employee is not vested with the power to sanction leave or to initiate disciplinary proceedings is not conclusive of the question as to whether the work performed by him falls within the categories stipulated in section 2 (s).

6. As per the directions issued by this Court, the issue of workman and relationship between the parties are framed. Both sides led evidence. It is undisputed that complainant examined himself twice. In his evidence at Exhibit U-14 he has specified the duties performed by him. According to him, he was required to assist the other staff and that had to do the work as directed by his superiors. It is observed by the Industrial Court that during the cross-examination of the respondent herein, there was no suggestion made with regard to the nature of work done by him which constitutes managerial or administrative work. In this regard, it would be relevant to take note of admitted fact that the petitioners had issued order of appointment termed as contract appointment. The respondent was appointed as Grader. The letter of appointment does not show that he was required to perform any other duties than Grader. Apart from this, the document placed on record by the

petitioners at Exhibit C-18 i.e. the agreement between the parties shows that the respondent was required to perform following work :-

- 1) *To grade/categorize cotton in specified variety and grade.*
- 2) *To procure raw cotton from farmers who have brought valid 7/12 statement have scoured valid taken from APMC.*
- 3) *To maintain fire fighting arrangement and other arrangement in factory.*
- 4) *To effect weighment or Raw Cotton lint, seed, bales etc.*
- 5) *To dispatch/ deliver lint, seed, bales etc. as directed by officers of party No.1.*
- 6) *To maintain complete record of the centre and supervise the staff at the centre.*
- 7) *To do all allied, incidental and ancillary work at centre in respect of cotton Procurement, processing etc.*

Bare perusal of the duties required to be performed by the respondent, shows that his dominant duty was to Grade / Categorize cotton in specified variety and grade. The other duties are ancillary and incidental in nature. In this regard, it would be relevant to take note of the evidence led by the petitioners before the Industrial Court. The witness of the petitioners in no uncertain terms has

accepted that the duty of the respondent was to classify the cotton and to take notes. He further admits that there is no document to show that the respondent herein was having any power or any authority.

7. This Court finds that the observations made by the learned Single Judge of this Court in ***Standard Chartered Bank*** (Supra) would not come to the aid of petitioners in any manner. From evidence on record it is clear that the dominant work of the respondent is to grade/ categorize cotton in specified variety and grade.

8. At this stage, it would be relevant to take note of the definition of workman under Section 2 (s) of the Industrial Disputes Act which reads thus : -

"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.*

9. Perusal of the said definition shows that any person who is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, is workman. As far as present case is concerned, the work of the respondent can be categorized as skilled or technical. He is appointed to grade the cotton in specified varieties. If it is so, he possesses special skill of categorization/ grading of cotton. The nature of work performed as a Grader is duly covered in the

category of skilled as well as technical work. The evidence led by the respondent more than sufficiently demonstrates that he has been able to prove that he performed the work as covered by the said definition. Once such burden is discharged, the onus stood shifted on the petitioners to prove that he was performing managerial or administrative duty as dominant part of his work.

10. As discussed above, the evidence led by the petitioners falls short to prove the said case of the petitioners before the Court. Having regard to the evidence on record and considering the dominant nature of duties performed by the respondent, this Court finds no perversity in the reasoning recorded by the learned Industrial Court while holding the respondent as a workman within the meaning of Section 2 (s) of the Industrial Disputes Act. It is also held that the relationship of employer and employee between petitioners and respondent. The evidence led by the petitioner in the form of order of appointment, agreement between the parties etc. is sufficient to show such relationship, to maintain a complaint.

11. Having regard to the above discussion, Court finds no merit in the present petition to challenge the order. Hence, the petition is

dismissed.

12. At this stage, learned Counsel for the petitioners submits that since the issue of relationship between the petitioners and respondent is decided in an application for Condonation of Delay, the said finding may not come in the way of the petitioners to challenge the complaint on merits if delay is condoned. He further submits that the issue regarding forfeiture whether legal or otherwise is yet to be decided and it can be only decided during the hearing of complaint only.

13. This Court finds substance in the said contention, hence it is made clear that the observations made by the Industrial Court with regard to the relationship between the parties to be treated only for the purpose of prima facie case being made out to maintain complaint and to decide the application for condonation of delay, and the same shall not preclude the petitioners to raise all other objections except for objection with regard to the issue of workman during hearing of complaint on merits.

(R. M. JOSHI, J.)

vj gawade/-.