

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4159 OF 2023

Maass Flange India Pvt. Ltd.

...Petitioner

Versus

Utteshwar Tukaram Somawanshi

...Respondent

Mr. D. J. Bhanage with Mr. Mayur D. Joglekar, for Petitioner.

Ms. Vidya Kamble, for Respondent.

CORAM : SANDEEP V. MARNE J.
RESERVED ON : 08 FEBRUARY 2024.
PRONOUNCED ON : 13 FEBRUARY 2024.

JUDGMENT :

1. **Rule.** Rule is made returnable forthwith. With the consent of learned counsel appearing for the parties, the petition is taken up for final hearing and disposal.
2. Petitioner-Employer has filed this petition challenging the Order dated 15 December 2022 passed by Presiding Officer, Labour Court No.1, Pune answering the preliminary issue about Respondent's status as 'workman' under Section 2(s) of the Industrial Disputes Act, 1947 (ID Act).

3. Petitioner is engaged in manufacture of stainless-steel flanges, etc. and has a manufacturing facility in Pune. Respondent was initially appointed as Security Personnel with Petitioner-Company by Order dated 14 November 2008 and was confirmed in service w.e.f. 17 May 2009. He was further promoted to post of Junior Officer-Security by Order dated 31 October 2015. He continued to work with Petitioner upto 1 June 2016. It appears that an untoward incident occurred in the premises of Petitioner on 1 June 2016 when an electrician committed suicide. Services of the Respondent came to be terminated by letter dated 10 December 2016. It is the case of Petitioner that the services of Respondent were required to be terminated on account of extreme reaction of other workmen against Respondent as allegations were made that his style of supervision resulted in the suicide of the workman. According to Petitioner, even local villagers were against continuation of Respondent and attempted to attack him. That in such circumstances, Respondent stopped attending the duties. Petitioner claims to have paid salary to Respondent for period from June 2016 to October 2016, though he was not attending duties. That as Petitioner could not afford to pay him salary without any output, he was offered compensation. That Respondent demanded an amount of Rs.10 lakh. In this background, Respondent was terminated from service by letter dated 10 December 2016 by paying him an amount of Rs.54,863/- in lieu of notice pay and legal dues. The total amount due to Respondent was Rs.1,55,627/- which included monthly salary of Rs.26,776/-, leave encashment of Rs. 62,187/-, Bonus of Rs. 11,801/- and Gratuity of Rs.54,863/-. From the total amount due to Respondent of Rs.1,55,627/- an amount of Rs.1,00,564/- was deducted towards loans and advances and this how amount of Rs.54,863/- was paid to him.

4. An industrial dispute was raised at the behest of Respondent, which led to making of an order of Reference to the Labour Court, Pune, which was registered as Reference (IDA) No. 448 of 2017. Respondent filed his Statement of Claim, which was resisted by Petitioner by filing its Written Statement. Petitioner raised an objection that Respondent is not a 'workman' under Section 2 (s) of the ID Act. Labour Court framed issues on 14 December 2018 and Issue No. 2 was framed regarding status of Respondent as workman and the said issue was taken up as preliminary issue. Respondent led evidence on the preliminary issue, whereas the Petitioner filed voluminous documents on record to prove that he was not workman.

5. By Order dated 15 December 2022, the Labour Court answered the preliminary issue in the affirmative and held that Respondent is workman within the meaning of Section 2 (s) of the ID Act. The Order dated 15 December 2022 is under challenge in the present petition.

6. Mr. Bhanage, the learned counsel appearing for Petitioner would submit that the evidence on record proved beyond iota of doubt that Respondent was engaged in managerial and supervisory capacity. That Respondent never worked as Security Guard nor performed manual, technical or clerical work. That he failed to discharge the burden of proving that he performed work fitting into the definition of the term 'workman' under Section 2 (s) of the I.D. Act. That the very appointment of Respondent was as Security-Supervisor and that he was further promoted to the post of Junior Officer-Security. That the stand of Respondent was exposed in the cross-examination where he admitted supervision over other employees. That he submitted reports against other employees for disciplinary action. That he was involved in goal-

setting. Mr. Bhanage would therefore submit that, the Labour Court has erred in holding that Respondent is a workman under Section 2 (s) of the ID Act. In support on his contentions, he would rely upon the judgment of the Apex Court in *H.R. Adyanthaya and Others Vs. Sandoz (India) Ltd. And Others*¹ and of this Court in *G.S. Khairkar Vs. Camlin Limited*².

7. *Per contra*, Ms. Kamble, the learned counsel appearing for Respondent would oppose the petition submitting that Respondent always performed manual and technical nature of work. That he was neither capable nor performed supervisory or managerial work. That his educational qualification is 11th Standard and he is incapable of working as a Manager or an Officer. That the designation of supervisor or officer would not decide the nature of work performed by Respondent. That it has come in the cross-examination of Respondent, that he was reporting to Human Resource Manager. That no decision was ever taken by the Respondent with regard to working of the Petitioner-Company. She would pray for dismissal of the petition.

8. Rival contentions of the parties now fall for my consideration.

9. The short issue that arises for determination in the present petition is about Respondent's status as 'workman; within the meaning of Section 2(s) of the ID Act. Section 2 (s) defines the term 'workman' as under:

2. Definitions.-

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, 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,

¹ (1994) 5 SCC 737

² 1997 II CLR 1164

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. Though there are numerous decisions of the Apex Court interpreting the term workman, the Constitution Bench decision in *H. R. Adyanthaya* (supra) takes into consideration the entire case law on the subject including its 3 Judge Bench decisions in *May & Baker (India) Ltd. Vs Workman* (1961) 2 LLJ 94 and *Burmah Shell Oil Storage & Distribution Co. of India Ltd. Vs. Burmah Shell Management Staff Assn.* (1970) 3 SCC 378. The Apex Court held in Para-24 as under :

24. We thus have three-Judge Bench decisions which have taken the view that a person to be qualified to be a workman must be doing the work which falls in any of the four categories, viz., manual, clerical, supervisory or technical and two-Judge Bench decisions which have by referring to one or other of the said three decisions have reiterated the said law. As against this, we have three-Judge Bench decisions which have without referring to the decisions in May & Baker, WIMCO and Burmah Shell cases have taken the other view which was expressly negatived, viz., if a person does not fall within the four exceptions to the said definition he is a workman within the meaning of the ID Act. These decisions are also based on the facts found in those cases. They have, therefore, to be confined to those facts. Hence the position in law as it obtains today is that a person to be a workman under the ID Act must be employed to do the work of any of the categories, viz., manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. We reiterate the said interpretation.

11. It is well-settled proposition that mere designation of an employee cannot be determinative of its status as workman. What is important is the predominant nature of duties and incidental performance of supervisory duties would not make an employee a person employed in supervisory capacity. This Court in **Mr. Venkatesh Seena Naidu Vs. Netel India Limited & Anr.**³ has held in para Nos. 12 to 15 as under :

*12. The short issue involved in the present petition is about the correctness of the findings recorded by the Labour Court holding that Petitioner is not a 'workman' within the meaning of Section 2(s) of the I.D. Act. There can be no doubt to the proposition that mere designation of an employee cannot be determinative of his status as workman or otherwise. It is also equally settled that what is important is the predominant nature of duties and incidental performance of supervisory duties would not make an employee a person employed in supervisory capacity. The law in this regard is well settled by various judgments relied upon by Mr. Shaikh in **The Spices & Oils Seed Exchange Ltd., Arkal Govind Raj Rao, H.R. Adyanthaya, Vandana Joshi (supra)**.*

*13. The Apex Court in **Burmah Shell** (supra) had laid down tests in cases where employees perform more than one kind of work for the purpose of determining whether he fits into the definition of the term 'workman'. The Apex Court took note of its judgment in **Ananda Bazar Patrika** and **May and Baker**, on which reliance is placed by Mr. Shaikh, and held that if a person is mostly doing supervisory work and, incidentally or for a fraction of time, also does some clerical work, he is employed in a supervisory capacity and conversely if the main work done is of clerical nature and the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of work done by him will not convert his employment as a clerk into the one in a supervisory capacity. The Apex Court held in paras-5, 6 and 7 as under :*

5. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. Mr. Chari on behalf of the Association, however, put forward the argument that this definition is all comprehensive and contemplates that all persons employed in an industry must necessarily fall in one or the other of the four classes mentioned above and, consequently, the Court should proceed on the assumption that every person is a workman; but he may be taken out of the definition of workman' under the four exceptions contained in the definition. The two exceptions with which

we are primarily concerned are Exceptions (iii) and (is). Under Exception (iii), even a workman, who is employed mainly in a managerial or administrative capacity, goes out of the definition of 'workman', while under Exception (iv), persons, who are employed in a supervisory capacity, go out of the definition, provided they either draw wages exceeding Rs. 500/- per mensem or exercise, by the nature of the duties attached to the office or by reason of the powers vested in them, functions mainly of a managerial nature.

*6. We are unable to accept this submission. In the case of **May and Baker (India) Ltd. v. Their Workmen**, this Court had to consider the correctness of a decision of a Tribunal which had held that one Mukerjee, an employee in an industry, was a workman under the Act, because he was not employed in a supervisory capacity. The Court held.*

"The Tribunal seems to have been led away by the fact that Mukerjee had no supervisory duties and had to work under the directions of his superior officers. That, however, would not necessarily mean that Mukerjee's duties were mainly manual or clerical. From what the Tribunal itself has found it is clear that Mukerjee's duties were mainly neither clerical nor manual. Therefore, as Mukerjee was not a workman, his case would not be covered by the Industrial Disputes Act and the Tribunal would have no jurisdiction to order his reinstatement."

In that case, the Court thus held Mukerjee not to be a workman on the ground that his work was neither clerical nor manual which was the nature of the work envisaged in the definition to make an employee a workman. It is true that that decision was given on the definition of "workman" as it stood before the amendment of 1956 when the words "supervisory" and "technical" did not occur in the definition. Mr. Chari's submission is that the amendment in 1956 introduced the words "supervisory" and "technical" with the object of making the definition all-comprehensive; but, on the face of it, it cannot be so. If every employee of an industry was to be a workman except those mentioned in the four exceptions, these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions. The specification of the four types of work obviously is intended to lay down that an employee is to become a nan only if he is employed to do work of workman one of those types, while there may be employees who, not doing any such work, would be out of the scope of the word "workman" without having to resort to the exceptions. An example, which appears to be very clear, will be that of a person employed in canvassing sales for an industry. required to do any paper work, nor may he be required to He may not be have any technical ing the work of any other employees, nor knowledge He may nay not be supervising the would he be doing any skilled or unskilled manual work. He would still be an employee of the industry

and, obviously, such an employee would not be a workman, because the work, for which he is employed, is not covered by the four types mentioned in the definition and not because he would be taken out of the definition under one of the exceptions.

7. The next aspect that has to be taken notice of is that, in practice, quite a large number of employees are employed in industries to do work of more than one of the kinds mentioned in the definition. In cases where an employee is employed to do purely skilled or unskilled manual work, or supervisory work, or technical work, or clerical work, there would be no difficulty in holding him to be a workman under the appropriate classification. Frequently, however, an employee is required to do more than one kind of work. He may be doing manual work as well as supervisory work, or he may be doing clerical work as well as supervisory work. He may be doing technical work as well as clerical work. He may be doing technical work as well as supervisory work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does or does not go out of the definition of "workman" under the exceptions. The principle is now well-settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other type of work. In the case of May and Baker India Lid. (supra), the Court, in the quotation cited above, noticed the fact that Mukerjee's duties were mainly neither clerical nor manual. The significance attaches to the word "mainly", because Mukerjee's duties did involve some clerical and manual work, yet, he was held not to be a workman.

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15. Thus any person employed in an Industry to do manual, unskilled, skilled, technical, operational, clerical or supervisory work becomes Workman. Some exceptions are identified which include a person employed mainly in managerial or administrative capacity or who, being employed in a supervisory capacity draws wages Rs.10,000/- per month. Thus, mere performance of supervisory work does not take a person out of the definition of the term 'Workman'. For that purpose, what is required to be proved is not supervisory nature of work but employment in supervisory capacity.

12. Thus to fit into the definition of the term 'workman', it must be proved that a person was performing any of the listed types of works of manual, unskilled, skilled, technical, operational, clerical or supervisory. There is a distinction between performance of supervisory work and employment in supervisory capacity. Mere performance of

supervisory work does not exclude a person from definition of the term workman. However if he is employed in a supervisory capacity and draws monthly wages in excess of Rs. 10,000/-, he cannot be treated as 'Workman'.

13. Having discussed the law expounded on the issue of interpretation of the term 'workman' within the meaning of Section 2 (s) of the ID Act, I now proceed to examine correctness of finding recorded by the Labour Court upholding the status of Respondent as workman. Respondent's initial appointment was to the post of Security Personnel. He was paid gross salary of Rs.9940/- including ESI and PF Contribution. On completion of probation, letter of confirmation was issued on 29 April 2009. There is no document on record by which status of Respondent was changed from 'Security Personnel' to 'Supervisor-Security'. However, the said designation appears in the Promotion Letter dated 31 October 2015 by which Respondent was promoted to the post of Junior Officer- Security (w.e.f. 1 November 2015). From various documents placed on record, Respondent apparently worked as Security Supervisor. In his Affidavit of Evidence, Respondent stated that he was working as Guard-cum-Supervisor in the Petitioner-Company from 14 November 2008 and that he was never given any job of Security Supervisor. The 'Employees Detail Form' placed on record indicates that the education qualification of Respondent is 11th Standard.

14. The sheet anchor of Petitioner in the present petition is the cross-examination of Respondent. In his cross-examination, Respondent has given following admissions:

- i. *I was appointed as Security Supervisor on 14 November 2008.*
- ii. *I worked as Security Supervisor in other establishments.*

- iii. *That I signed 'Ok' on attendance sheets of other employees.*
- iv. *That I signed as night checking supervisor on a document.*
- v. *That I have prepared goal setting of various departments.*
- vi. *That I have submitted various reports in my capacity as supervisor.*
- vii. *That I had given a report about Adinath Shelke since he was working under me.*
- viii. *That I was supervising house-keeping department also.*
- ix. *That I have submitted reports during night rounds about taking action against errant security guards.*
- x. *That I was given goal setting in my capacity as security officer.*
- xi. *That I have signed on my report about behaviour of other employees.*

15. The above admissions clearly indicate that Respondent was actually working predominantly in supervisory capacity. Though Respondent stated in his Affidavit of Evidence that he worked as Guard-cum-Security, there is absolutely nothing on record to indicate that he ever worked as a Security Guard. If he indeed worked as Security Guard himself, there was absolutely no question of him supervising his fellow Security Guards. It has come in evidence that in the previous organisations as well Respondent worked as Security Supervisor. Petitioner produced before the Labour Court copies of muster rolls, on which Respondent has signed with an endorsement 'Ok' which *prima facie* indicates that Respondent had authority to certify the attendance of other employees. Petitioner placed on record 'Night Check Proforma' of LMC Security Force, which was apparently providing Security Guards to Petitioner-Company, and on those forms, Respondent has signed as Supervisor. Respondent was thus supervising the guards deployed during night duties.

16. Petitioner has also placed on record various reports submitted by Respondent to the higher management about the misconduct committed by other Security Guards from time to time. This is not case of stray report given by Respondent, but it appears that

Respondent was repeatedly and continuously reporting the behaviour of other Security Guards. Petitioner also produced Goal-Setting Reports in respect of Respondent, which shows that the goals expected from Respondent were in the areas of:

- i. *Preparation of monthly MIS of HR.*
- ii. *Plant house-keeping and level maintenance.*
- iii. *Involvement in plant level safety activities.*
- iv. *Watch and Ward smooth functioning of MF IPL.*

The performance indicators in the Goal-setting was number of reports submitted by Respondent. The Goal-Setting of other years had other criteria, which again indicate that Respondent was essentially performing supervisory duties. Petitioner has also placed on record other reports about functioning of various departments and of other employees (other than Security Guards). Those documents would again clearly demonstrate supervisory nature of duties performed by Respondent.

17. Another factor to prove employment of Respondent in supervisory capacity is absence of post of Security Supervisor or Junior Officer-Security in the Settlements executed by management with the Union of the workmen. Petitioner has placed on record Settlement Agreements dated 18 September 2012 and 9 April 2016 executed with the Union which did not effect any wage revision or revision of conditions of service of either Security Supervisor or Junior Officer-Security.

18. Mr. Bhanage has relied upon judgment of this Court in ***G. S. Khairkar*** (supra) in which the concerned employee was working as Assistant Security Officer. This court has held in para-7 of the judgment as under:

7. The evidence on record shows that the Petitioner was appointed as Assistant Security Officer. The evidence on record also shows that one of the persons amongst the other Asstt. Security supervisors was designated as security supervisor. However, the Manager sought to explain this by saying it was a mistake and that was subsequently corrected. The Petitioner chose not to step into the witness box. Therefore all the evidence on record is the evidence of the witness of the Respondent Company which includes the Administration Manager Shri S. P. Patil and another Assistant Security Supervisor Shri Subbarao Pandurang Patil. The nature of work done by the Petitioner seems to be posting of the security guards, doing a round of the premises to find whether they are doing the job, filling in the attendance register of himself and others, being present at the place where loading of the goods is being done. It has also come on record that in respect of wage settlement, the Assistant Security Supervisors are not included in the said settlement and the wage hike or increase is given to them by the Management which is different from settlement arrived at in so far as the workers are concerned. Whether the Petitioner is doing any other work which is clerical in nature is not possible to be said from the material on record. In the absence of any evidence on the part of the Petitioner to displace the evidence led by the Employer it cannot be said that the Industrial Court was wrong in reversing the findings of the Labour Court and arriving at a conclusion it has arrived at. Normally, the revisional court cannot reappreciate the evidence. In the instant case, the Industrial Court has given reasons as to why it been reappreciated the evidence as a wrong test had been applied by the Labour Court. The approach of the Industrial Court cannot be said to be contrary to law. In view of the above, there is no merit in this writ petition which is accordingly rejected.

19. Though designation itself would not determine the exact nature of duties performed by Respondent, his designations of Security Supervisor and Junior Officer-Security, when seen in combination with the nature of predominant duties performed by him, would leave no manner of doubt that he performed duties of supervisory nature.

20. It appears that the last monthly salary drawn by him was Rs. 26,776/- which is higher than the limit of Rs.10,000/- prescribed under clause (iv) of Section 2 (s) of the ID Act. Since he drew wages exceeding Rs. 10,000/- per month, he would fall within the exception to definition of term workman under Section 2 (s) of the ID Act. It must also be borne in mind that Petitioner was given higher position of Junior Officer-Security by Promotion Order dated 31 October 2015.

21. The Labour Court has laid emphasis on absence of power/authority in Respondent to take any independent decision. In my view, if the authority to take decision was vested in Respondent, he would have fallen into managerial or administrative capacity. In the present case, it cannot be held that Respondent was working in managerial or administrative capacity. However, evidence on record clearly proves that Respondent predominantly worked in supervisory capacity and drew wages higher than Rs. 10,000/-.

22. In my view, Respondent did not produce any evidence to show that he actually worked as Security Guard at any point of time. The Labour Court has not properly appreciated the evidence on record and proceeded to ignore voluminous evidence produced by Petitioner to prove that Respondent consistently performed supervisory nature of duties. To my mind, the findings recorded by the Labour Court suffers from perversity. This is not a case where Respondent predominantly worked as Security Guard and occasionally supervised other guards. There is no evidence on record to prove that Respondent performed manual, unskilled, skilled, technical, operational or clerical work. It is not that Respondent was performing supervisory work, but it is proved that he was employed in supervisory capacity.

23. I therefore find the Order passed by Labour Court to be indefensible. The Writ Petition accordingly succeeds and I proceed to pass the following Order:

ORDER

(i) Order dated 15 December 2022 passed by Presiding Officer, Labour Court No.1, Pune in Reference (IDA) No. 448 of 2017 is set aside.

24. Writ Petition is **allowed** in above terms. Rule is made absolute. There shall be no order as to costs.

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SANDEEP V. MARNE, J.

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