

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10523 OF 2023

Rohit Dembiwal

.. Petitioner

Versus

Tata Consultancy Services Ltd. & Ors.

.. Respondents

.....

- Mr. Santosh Gavade, Advocate for Petitioner.
- Mr. Hemant Telkar, Advocate for Respondents.

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CORAM : MILIND N. JADHAV, J.

RESERVED ON : DECEMBER 22, 2023

PRONOUNCED ON JANUARY 02, 2024

JUDGMENT:

1. Heard Mr. Gavade, learned Advocate for Petitioner and Mr. Telkar, learned Advocate for Respondents.

2. This Writ Petition is filed under the provisions of Articles 226 and 227 of the Constitution of India to challenge the judgment dated 04.09.2021 passed by the learned Industrial Court, Mumbai in Revision Application (ULP) No.10 of 2021 under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short "**MRTU and PULP Act**").

3. Petitioner filed Revision Application under Section 44 of the MRTU and PULP Act to challenge the judgment and order passed by the learned Judge Third Labour Court Mumbai in Complaint (ULP) No.283 of 2015 dated 11.01.2021 by which the Complaint filed by

Petitioner was dismissed holding that Petitioner is not a ‘workman’ as defined under Section 2(s) of the Industrial Disputes Act, 1947 (for short “ID Act”) and consequently an ‘employee’ within the meaning of section 3(5) of the MRTU and PULP Act. By the said judgment the learned Labour Court further held that it did not have jurisdiction to adjudicate the complaint.

4. Such of the relevant facts necessary for adjudication of the present Writ Petition are outlined hereunder:

4.1. On 16.06.2010, Petitioner was appointed as IT Analyst Grade C-2 on basic salary of Rs.14,500/- per month excluding all other benefits. On 04.11.2010, he was confirmed in the services of the Respondent No.1 – Company. On 28.10.2011, service of Petitioner was terminated by the Respondent No1 - Company. It is Petitioner’s case that his service was terminated without following the due process of law.

4.2. Thereafter, Petitioner filed Complaint (ULP) No.283 of 2015 before the learned Third Labour Court, Mumbai. It is contented by the Petitioner that the learned Labour Court failed to appreciate the admitted documents on record and the real role of the Petitioner in the Respondent No.1 – Company and held that Petitioner was not a ‘workman’ or ‘employee’ considering that the Petitioner’s last drawn salary was Rs.57,108/- and that he was a Module leader and 7

members were working under his guidance and control, that the Petitioner would approve time-sheet and leave of his team members, that he handled financial matters including reimbursement of medical expenses and travel expenses of his team members and thus could not be deemed to be a 'workman' under the ID Act and the MRTU & PULP Act.

4.3. The findings of the learned Labour Court have been upheld by the learned Industrial Court in Revision proceedings. Being aggrieved by the above, Petitioner has filed the present Writ Petition.

5. Mr. Gavade, learned Advocate appearing for the Petitioner would submit that both the impugned judgments passed by the learned Industrial Court and the learned Labour Court do not decide and interpret the definition of 'workman' and 'employee' within the meaning of Section 2(s) of the ID Act and Section 3(5) of the MRTU and Pulp Act correctly and have miserably failed to appreciate the evidence placed on record for the same. He would submit that in the judgment passed by the learned Labour Court words like 'control', 'supervision', 'approving leave', 'handling financial matter' have been imported without the Respondents producing any documentary evidence to prove that Petitioner indeed had the power and authority in a supervisory capacity. He would submit that though the Petitioner was designated as Module leader and performed various functions

under the project named SBI-CBS Service Desk Support, it cannot be construed that Petitioner was performing a supervisory duty since the Petitioner was assigned to the project named SBI-CBS Service Desk Support which incorporated tasks relating to analyzing tickets, assigning tickets, tracking solution of tickets which were incidental to the actual work i.e. dominant nature of duty performed by the Petitioner.

5.1. Mr. Gavade would submit that Petitioner was working as one of the billable resources and a team member in the said project from October 2010 to May 2011 for carrying out maintenance activities but his designation was IT Analyst whereas his role in the said project undertaken was that of a production support executive only. He would submit that the salary pay slip issued to the Petitioner did not mention the said project since Petitioner was never allocated to the said project officially but was merely asked to work as a team member in the said project. Hence according to Petitioner he could never be a Module leader of the project. He would submit that the offer letter dated 16.06.2010 offered the position of IT Analyst in Grade C-II to the Petitioner as a monthly paid full time worker which was basically a post of technical nature to do routine skilled, manual, technical, operational and / or clerical work. He would submit that after appointment, Petitioner was put on probation for a period of 3

months and after completion of probation received the confirmation letter dated 04.11.2010.

5.2. He would submit that the job of an IT Analyst for which the Petitioner was appointed is mainly of technical nature and skill and he is required to work on MS Asp.Net platform and there is no mention of any supervisory / managerial / financial role either in the offer letter or the confirmation letter or any letter subsequently issued to the Petitioner. He has laid emphasis on the offer letter which states that Petitioner may be required to work in shifts and / or extended working hours or beyond working hours depending upon the business requirements and exigencies from time to time and would thus submit that Petitioner was a 'workman' and not a Module leader / Supervisor.

5.3. He would submit that the termination of Petitioner has been effected pursuant to Performance Improvement Plan ("PIP") but in the offer letter it has not been informed to the Petitioner that he shall be kept on PIP after confirmation. He would submit that assuming that the Petitioner was concerned with the project SBI-CBS Service Desk Support, however when the Petitioner was not officially appointed or allocated the said additional charge of Service Desk Support which was never mentioned in the salary slip issued to him, then the fact that Petitioner was performing such work in addition to

his dominant nature of duties is irrelevant and ought not to have been considered by the learned Labour Court as well as the learned Industrial Court. He would submit that In addition thereto the Petitioner has worked in the project SBI-CBS production support from 04.10.2010 to 31.03.2011 and even thereafter continued upto 22.05.2011 without he being officially appointed or allocated in the said project. He would submit that Petitioner discharged his duties adequately and satisfactorily which is borne out by the revised compensation letter dated 04.05.2011 and if his performance was satisfactory, there could be no reason to terminate his services subsequently. He would submit that considering that Petitioner's performance was satisfactory, the Respondent No.1 – Company did not take cognizance, which this Court should consider in the facts of the present case.

5.4. He would submit that though Petitioner was designated as an IT Analyst, various parameters in the global speed program used for performance appraisal evaluation for the purpose of mid-anniversary review were wrongly pre-set by the HR department and these parameters were infact filled up by the HR and not by the Petitioner. He would submit that in the aforesaid appraisal data, Petitioner was shown as Module leader which is a technical role specific to a project and not a designation of leadership. He would submit that in the

Petitioner's case, both the mid-anniversary and final anniversary appraisal reviews were assessed simultaneously after the end of the project though the time duration of each appraisal was different. He would submit that on 23.08.2011, Respondent No.1 – Company issued the PIP initiation letter to the Petitioner which was contrary to the terms of his employment and the appointment letter. He would submit that before issuing the said letter, Petitioner was not even informed about the same nor issued any show cause letter or warning letter or advisory and thus such an act on the part of the Respondent No.1 - Company was an act of victimization of the Petitioner. Next, he would submit that though the PIP letter envisaged that Petitioner would be kept under PIP for a period of 3 months, Petitioner was denied the tools and resources so as to meet the recognition of skills or training i.e. Petitioner's supervisor failed to provide the necessary support, feedback, guidance and motivation to the Petitioner. On the basis of these submissions he would submit that charges levelled in the show-cause notice dated 24.10.2011 were fabricated to victimize the Petitioner.

5.5. He would thus submit that without even allowing Petitioner to complete the full term of PIP and when he was suffering from a medical ailment, Petitioner was removed from service after conducting the enquiry. He would submit that on an overall appreciation of the

material placed on record, it is evident that Petitioner was merely a production support executive designated as IT Analyst and not a Module leader as deposed by the Respondents' witnesses and therefore qualifies as a 'workman' under the ID Act and employee under the MRTU and PULP Act. Hence he would submit that both the judgments passed by the learned Labour Court and the learned Industrial Court suffer from a clear error of law apparent on the face of record in designating the Petitioner as a Module leader when the Petitioner clearly qualifies as a 'workman'. He would submit that both the judgments dated 04.09.2021 and 11.01.2021 passed by the learned Industrial Court, Mumbai and learned Labour Court respectively therefore deserve to be quashed and set aside.

6. *PER CONTRA* Mr. Telkar learned Advocate appearing for the Respondent No.1 - Company would submit that the learned Labour Court and the learned Industrial Court have rightly dismissed the Complaint of the Petitioner, as the Petitioner was neither a 'workman' as defined under Section 2(s) of the ID Act nor an 'employee' as defined under Section 3(5) of the MRTU and PULP Act. He would submit that Petitioner was initially selected for the post of IT Analyst in Grade C-II and was issued an appointment letter dated 05.08.2010 w.e.f. 04.08.2010 on probation for a period of 3 months and after completion of the probation period, he was confirmed as Analyst in

Grade C-II vide letter dated 04.11.2010. He would submit that as an Analyst, Petitioner was required to work on the projects / works which were assigned to him from time to time. Similarly, from 23.05.2011, Petitioner was assigned to work on SBI-CBS software project, however since the Petitioner did not meet the Company's expected standard of work, he was put to notice / on guard about his non-performance on several occasions and various communications were issued to him by emails from time to time.

6.1. He would submit that Petitioner was thereafter put on PIP from 11.08.2011 and the same was also discussed with him during a meeting with his superior and HR, however despite the same Petitioner deliberately went on leave from 11.08.2011 to 23.08.2011 and thereafter when he resumed services on 24.08.2011 he was handed over letter dated 23.08.2011 which was duly acknowledged by him.

6.2. He would further submit that on 31.08.2011 and 02.09.2011, Petitioner was called for a meeting to discuss the PIP goals by intimation through e-mails, however Petitioner deliberately and unauthorizedly remained absent from 25.08.2011 to 09.09.2011. Thereafter as per the procedure, Respondent No.1 - Company sent e-mails dated 07.09.2011 and 09.09.2011 requesting the Petitioner to report back to his duties immediately, however when he reported

back, he submitted medical documents for partial leave period only on 19.09.2011 and thereafter he was inaccessible during his leave period which highlighted his reluctance to undertake the PIP. He would submit that the Petitioner was sent various reminder e-mails by his superior from time to time reminding him of his PIP tasks and feedback was shared with him by his superiors.

6.3. He would submit that in the appraisal cycle from August to November 2011, short-comings in the performance of Petitioner were recorded and the same were brought to his notice. He was given a detailed PIP goal sheet and was specifically instructed to share the updated details thereof, which the Petitioner failed to comply. Therefore the Petitioner was issued a show-cause notice dated 24.10.2011 calling upon him to submit his written explanation within the stipulated time. However the Petitioner failed to submit his explanation and therefore vide termination letter dated 28.10.2011 his services were terminated by the Respondent No.1 – Company.

6.4. He would submit that the nature of work of the Petitioner was of managerial, administrative and supervisory in nature and he was assigned the role of Module leader in SBI workflow project and he had a team of 7 associates working under his control, supervision and guidance and the said fact is admitted by the Petitioner in his cross - examination before the learned Labour Court.

6.5. He would submit that Petitioner in his cross-examination has admitted the fact that he was assigned the role of Module leader of the team of 7 associates who were working under his guidance and control. Further Petitioner has also deposed that he used to analyze data as a part of his duties and that he used to interact with the clients of the Company as a group leader. He would further submit that Petitioner in his complaint has categorically admitted that as a Module leader, he used to analyze tickets for resolution and only after analyzing, it was assigned to his team members for resolution.

6.6. He would submit that upon perusal of the evidence of the two witnesses led by the Respondent – Company viz. Mr. Krishnan Iyer (Exhibit – ‘C9’) and Mr. Rohit Bhandari (Exhibit – ‘C15’) who were effectively cross-examined by Petitioner, it is clear that the nature of work of Petitioner was of a managerial, administrative and supervisory nature as the Petitioner was approving time sheet and leave of his team members, handling financial matters including reimbursement of medical expenses and travel expenses of his team members and furthermore he also had the authority to initiate disciplinary enquiry against them. He would therefore submit that the learned Labour Court and the learned Industrial Court have rightly upheld the dismissal of the Petitioner by the Respondent No.1 – Company.

6.7. In support of his above submissions, Mr. Telkar has referred to and relied upon the following decisions:-

(1) Shrikant Vishnu Palwankar Vs. P.O. of 1st Labour Court¹;

(2) Tanojkumar B. Chatterji Vs. Solapur Municipal Corporation²;

(3) A.K. Patel & Ors. Vs. The Indian Hotels Co. Ltd.³;

(4) Sadanand Ramesh Samsi Vs. Kirloskar Cummins Ltd. & Ors.⁴;

(5) John Joseph Khokar Vs. B.S. Bhadange & Ors.⁵;

(6) Dhruba Kumar Changkakoti Vs. Travel Corporation of India Ltd. & Ors.⁶;

(7) Saurashtra Majdoor Mahasan Sang Vs. Una Takula Khedur Sahakari Khand Udyog Ltd. & Anr.⁷;

(8) Tata Sons Ltd. Vs. S. Bandhopadyay & Anr.⁸;

(9) Gulshan Rai Madan Vs. Govt. of NCT of Delhi & Anr.⁹

(10) Standard Chartered Bank Vs. Vandana Joshi & Anr.¹⁰;

(11) Everest Advertising Pvt. Ltd. Vs. Pratik C. Khandhadiya & Ors.¹¹;

(12) Vilas Dumale Vs. Siporex India Ltd. & Ors.¹²; and

(13) Mohd. Yunus Vs. Mohd. Mustaqim & Ors.¹³.

1 1991 MLJ 1565 – Bom HC
2 2004 LLR 108 – Bom HC
3 2008 LLR 663 – Bom HC
4 2003 I CLR 50 – Bom HC
5 1998 LLR 213 – Bom HC
6 2007 LLR 1062 – Bom HC
7 1995 II CLR 512 – Guj HC
8 2004 LLR 506 – Delhi HC
9 2010 LLR 294 – Delhi HC
10 2010 LLR 200 – Bom HC
11 1999 LLR 669 – Bom HC
12 1998 LLR 380 – Bom HC
13 AIR 1984 SC 38

6.8. On the basis of the above submissions and contentions, Mr. Telkar has prayed for dismissal of the Writ Petition.

7. I have heard Mr. Gavade, learned Advocate for Petitioner and Mr. Telkar, learned Advocate appearing for Respondent No.1 – Company and with their able assistance perused the pleadings and record of the case. Submissions made by the learned Advocates for the parties have received due consideration of the Court.

8. In the present case, it is seen that Petitioner was appointed by appointment letter dated 16.06.2010 as IT Analyst by Respondent No.1. He was put on probation and after completion of probation period confirmed in service of Respondent No.1 by confirmation Letter dated 04.11.2010. It is seen that appointment letter states that Petitioner was appointed as IT Analyst in Grade C-II. After his appointment and completion of probation in May-2011, Petitioner was allotted and assigned project job operation (SBI – CBS Software service) having WON / SWON and alongwith a few of his colleagues was a Module leader of the said project. Though it is the Petitioner's case that other members working on the said project were his associate members, on the basis of evidence placed on record by the witness of Respondent No.1 and considered by the Labour Court and Industrial Court, it is seen that Petitioner was indeed assisting and

guiding his associates in the said project which was assigned to him. Though it is Petitioner's case that said rendering of assistance cannot be called as supervisory or managerial work and his dominant duties have to be looked at, the evidence is to the contrary. It is seen that admittedly there were 7 team members working under the Petitioner's guidance and control, though this is vehemently opposed by the Petitioner. What is pertinent to note is the factual situation with which the Petitioner was associated and that cannot be wished away. Petitioner's role in the said project admittedly was that of the Module leader considering various tasks performed by the Petitioner which have been proven on record. Some of these tasks which have been placed on record in the evidence of CW-1 under Exhibit – 'C9' was role of the Petitioner approving the time sheet and leave of his team members, that he was handling financial matters including reimbursement of medical expenses and travelling expenses of his team members and most importantly he was given authority to initiate disciplinary enquiry against his team members who were employees of Respondent No.1 – Company. In this background, Petitioner's contention that he was merely performing a technical job which fell under the category of workman cannot be accepted. The learned Industrial Court framed the most pertinent question and point for determination namely whether the judgment and order passed by the Labour Court suffered from an apparent error on the face of record in

this context. The learned Industrial Court answered this question in the negative thus upholding the judgment and order passed by the learned Labour Court.

9. Before I comment on the impugned judgment of the Industrial Court it will be worthwhile to consider the judgment dated 11.01.2021 passed by the Labour Court. Learned Labour Court framed two issues namely whether the Petitioner can be qualified as a workmen under the definition of 'workman' contained in Section 2(s) of the ID Act and consequently definition of 'employee' within the meaning of Section 3(5) of the MRTU and PULP Act. The Labour Court also framed the question as to whether the Labour Court had jurisdiction to try and entertain the complaint of the Petitioner. It is seen that learned Labour Court has considered a plethora of documents / documentary evidence which has been placed before the Labour Court and which find reproduction in paragraph No.10 of the learned Labour Court's judgment. Further it has been vehemently argued by Mr. Gavade, learned Advocate appearing for the Petitioner that the test to be employed as to what was the dominant nature of the duties of the employee is to be seen to determine his status and adjectives and words like managerial, supervisory should not be loosely used to change the character and status of the work performed by the employee. Based on the oral and documentary evidence, the

learned Labour Court considered the evidence of the Petitioner himself in the first instance. In his cross-examination below Exhibit 'U-13', Petitioner deposed that he was indeed assigned the role of Module leader of the team and there were 7 team members working under his guidance and control. Petitioner has himself deposed further that he used to analyse the data as part of his duty and being a group leader one of his duty was to get the tasks accomplished from his team members and also resolve their problems. Another significant piece of evidence which comes out in the cross-examination of the Petitioner is that he has admitted to having interacted with clients of Respondent No.1 – Company as a group leader on the said project. Next the Petitioner has himself deposed in cross-examination that he was required to take corrective action to ensure desired results, he used to analyse problems and root cause for the same for completing the tasks with his team members and his duties involved innovating initiatives and value addition (*emphasis applied*) and used to guide his team in DR drill activity. Perusal of cross-examination of Petitioner below Exhibit 'U-13' and more specifically the role, duties and responsibilities performed by him as described in detail in paragraph Nos.50, 54, 55, 56 and 61 of his complaint confirm the aforesaid position. Petitioner has also confirmed and admitted the fact that he was a Module leader, that his duty was to analyse tickets for resolution and after preparing and analysis assign the same to the concerned team member for

solution, maintaining and track solution of the tickets by effectively monitoring the period for which such tickets were opened and remained pending for closure, forecasting accurate solutions at regular intervals and to provide details of service desk call position, report to the development team for their knowledge so that the said team can use the same for empowering the application. The aforementioned evidence as deposed by the Petitioner in his cross-examination is the basis for the judgment passed by the learned Labour Court and upheld by the learned Industrial Court.

10. The deposition of the Petitioner before the Labour Court is corroborated and fortified by the evidence of the two witnesses of Respondent No.1 – Company. It is seen from the cross-examination of the witness of Respondent No.1 – Company below Exhibit ‘C-9’, that Petitioner was also approving the time sheet and leave of his team members, handling their financial matter including reimbursement of medical expenses and travelling expenses and was also given authority to initiate disciplinary enquiry against his team members who infact were employees of Respondent No.1 – Company. Similarly, the deposition is also echoed by the witness of Respondent No.1 – Company below Exhibit ‘C-15’. The said deponent states that though Petitioner was working under him but at the same time he was never working under his supervision since Petitioner was allocated and

assigned an independent assignment as Module leader. The learned Labour Court analysed evidence given by the Petitioner below Exhibit 'U-13' and Exhibit 'C-9' and Exhibit 'C-15' and concluded that considering the actual work performed by the Petitioner he could not be categorised as workmen to have worked under the deponents below Exhibit 'C-9' or Exhibit 'C-15'. The learned Labour Court held that in view of his own admission as group leader and the duties performed by him, the same has to be treated as the best piece of evidence against him in the light of ratio laid down by Supreme Court in the decision of *Delhi Transport Corporation V/s Shyam Lal*¹⁴. It is clear that predominant nature or substantial work performed by the employee has to be analysed and any designation of employee or any incidental work done by him cannot determine or qualify him as a workman or otherwise. The onus and burden of proof to show the same is that on the Petitioner and in the present case while attempting to discharge the burden, the Petitioner's own deposition and cross-examination proves to the contrary. Considering the above, the learned Labour Court dismissed Complaint (ULP) No.283 of 2015 and held that it did not have jurisdiction to try and entertain any other issue raised by the Petitioner in his complaint.

11. In the above background the Petitioner approached the Industrial Court in revision. The learned Industrial Court has analysed

¹⁴ 2004 LLR 991 SC

and appreciated the evidence considered by the learned Labour Court while deciding the issue. The analysis by the learned Industrial Court can be seen on the basis of witness action in five specific paragraphs namely paragraph Nos.26 to 30. For convenience and reference, the said findings as analysed by the learned Industrial Court are reproduced below:-

“26) A perusal of the Complaint (ULP) No. 283 of 2015, it appears that, it is drafted in 178 pages. In Para No.13 of the Complaint, the Complainant has mentioned his duties as Module Leader. It has been contended that, he was Module leader for workflow production support at SBI Belapur for the time period October 2010, November 2010 and August 2011. In short, his duties were admittedly timely follow ups of the escalated queries / issues relevant to workflow modules, daily and timely performance monitoring of servers considering the factors terminate the system performance, status update on solution to the tickets logged in SPICS, promotion of IR's to UAT and production and sever monitoring, daily and timely monitoring of server on different parameters and maintain a record for the same which is shared among team members, status report submission and maintain a record on daily work / task, frequent updates on service desk call position report, frequent update on IR status with report having details of IR's status with report, status report submitted and maintain a record on DR drill performed to measure the availability of workflow servers from secondary location, maintain a record of billing / time sheet and schedule/ availability of associates. Further, it is mentioned that, he was module leader in workflow production support but the junior associates used to report directly to the Respondent No.6. Even though, he was discharging job responsibilities and performing his role and function in most efficient manner towards attainment of organizational goals and to blame him for the lack of team management or unsatisfactory performance may not be a proper allegation. In Para No. 50, it is mentioned that, “the Complainant as a module leader was first analyzing the tickets for resolution and only after proper analysis, it was assigned to the concerned team member for solution after taking into account the expected standards and the functionality support as defined in the SPICS application”. In Para No. 50 (c) it is mentioned that, “he was forecasting the

accurate solutions at regular interval and he used to provide details of service desk call position report to the development team for their knowledge so that the concerned team can use the same for empowering the application". He was allocated to project name SBI-CBS-PRODUCTION SUPPORT from 04/10/2010 to 22/05/2011. The said project comes under the management of group leader from CBS (Core banking solutions) PSO (production support) team. In Para No.51, it is mentioned that, "multiple failures of IR's were not because of any fault of the complainant as IR's were performed on the system which was put into use on which the client was expected to work. The development of IR was the responsibility of development team and if IR's were not properly coded by the development team, it could lead to multiple failures". In Para No.52 in regard to the follow up with TCS team is concerned, it is mentioned that, this follow up was made by the Complainant on his own without any dependency / guidance from the Respondent No.6 due to insight and application of mind by the Complainant. In Para No.54, it is mentioned that, the Complainant was independently handling the task completion through the team and whatever directions for follow up were given to the Complainant. In Para No.32 of the written statement, while replying Para No.13 and 14 of the Complaint, it is contended that, "the Complainant was required to analyze the data and provide appropriate solutions by forecasting the same and also it was expected of the Complainant to get the tasks accomplished from his team members". In Para No.32 (xvii), it is mentioned that, "there was a dedicated computer exclusively for the Complainant as a module lead and there were other computers which were sufficient for his team members who used to work in shifts. The Complainant never worked in shifts and he used to attend in general shifts by taking an undue advantage of he being a module leader".

27) If perused the evidence of Complainant at Exh.U13, it shows that, by relying on various authorities of Hon'ble Supreme Court and High Court, he has contended that, how he is a "workman". He has deposed that, work assigned to him was of technical and clerical in nature. He has not delegated any powers to sanction any type of leave, financial sanctions / approvals. He has not been assigned any work, responsibilities which primarily include managerial, administrative and supervisory in nature. His offer letter also not specifically mentioned his role or work responsibilities of are supervisory, administrative or managerial in nature. During the course of cross-examination, he has admitted his contention in Para No.13 and 14 of his Complaint. He has admitted that, he was assigned the role of module leader of the team. There were seven members in the team. He was the team leader. Further he has admitted, team members were

working under his guidance. He denied that, he was doing any duty of forecasting the appropriate problems and providing appropriate solutions for them. He admitted being a group leader, it was one of his duties to get the task accomplished from the team members. So far as term tickets used by him in Para No.10 (c) in the affidavit means service request from the clients. Further he admitted for resolving the problems of the clients service was required. Being module leader, he was assigned tickets to the team members for resolution of problems. He used to interact with the clients as a group leader. In Para No.33, he admitted that, in respect of few tasks he was required to take corrective action to ensure desired results. Further he admitted he used to prepare DR drill plan and submit the same. DR means disaster recovery drill in case of unfortune circumstances to ensure continuous service of server. Further he admitted his duties and responsibilities performed by him as described in Para No.50,54,55,56 and 61 of his Complaint. In Para No.36, he has deposed as per email dated 08/09/2010 as mentioned by him in Para No.7 of the affidavit, he was required to plan for the DR Drill and update on the status. Email as mentioned in Para No.8 of the affidavit was about extension of leave of one Shri. Muthu Laxman and it was marked to only few selected stake holders and him and not to all the team members. Further he has deposed that, time sheet means detailed representation about number of hours spent and tasks undertaken by each employee on every working day. When question was asked to him he was maintaining new record of members, he denied it was his job to maintain the said record. Further he volunteers that, he used to prepare the record and provide it to the supervisors. He used to ensure the correctness regarding the working hours before submitting the same to the respective superiors. That said employees were junior to him in designation.

28) The witness of the Respondents Mr. Rohit Bhandari vide Exh.C15 has deposed that, at the time of termination, the Complainant was working as a Project Lead in SBI Workflow Project. The Complainant was working with him as a Module Lead, leading seven member team people. The post of IT Analyst in Grade C2 which is a level higher than the basic level of System Engineer at Grade C1. During the course of cross-examination, he has deposed that, he was working as a team member with the Complainant and he was working under him. Module means one section of the particular application. In that application, the company engage certain number of team members. In Para No.23, he has deposed, it is not correct to say that job of IT analyst is purely a clerical and technical job. The full form of "ASP" which is mentioned in appointment letter of the Complainant is "Active Server Pages". It is one of the

application platform to build software applications, for all who have licence to use Microsoft. The Complainant was partially working in the job of ASP, apart from other responsibilities. Further during the course of cross-examination, several documents i.e. emails shown to the witness to show that, actually the witness Rohit Bhandari is the supervisor and the Complainant is a “workman”. In email dated 25/03/2011 issued by Mr. Rohit Bhandari regarding billing and time sheets (Ultimatix and SPICS), Service Desk team along with PSO Team need to fill the Timesheet in Ultimatix and SPICS as 8 hours NT and 1 hour NB. In Para No.2 it is mentioned “team has to fill the time sheet on the day when they are present in the office. For regular week off (Saturday and Sunday), they need not fill the hours in the ultimatix. For planned leave, associate must apply for leave and can only proceed ahead after leave approval, otherwise it will be treated as time sheet defaulter. For emergency and sick leave, associate must apply for leave after resuming the services. Below there is a signature of Complainant. The email dated 04/05/2011 seems to have been addressed to the Complainant by Rohit Bhandari. It is regarding leave of one Neha. In last, it is mentioned that, “with understanding from Riaz there is no need to consider separately for the allocation of an associate to production support WON, will communicate the message to the team member to submit the timesheet considering the non availability of other team member”.

29) Another witness of the Respondent Mr. Krishnan Iyer has deposed that, “the Complainant job was to analyze the nature of the issues, concerns, problems faced by the customers and assign the same to the said appropriate team members working under him, according to their expertise, for resolution of the same. In other words, the Complainant used to get these works done through his said team members. The Complainant was required to follow up the escalated queries / issues relevant to workflow production monitoring, which itself is a supervisory function”.

30) During the course of cross-examination, he has deposed that, the role of IT Analyst is a supervisory nature. It is pertinent to note that, some questions seems to have been asked by the Complainant to the witness which shows that, he was working in supervisory and administrative category. In Para No.2, the witness has deposed that, it is true to say that, the Complainant was approving time sheets and leave of his team members, handling financial matters including reimbursement of medical expenditure, travelling expenses of his team members. It is true to say that, the Complainant was given authority to initiate disciplinary enquiry against his team members i.e. employees of the Respondents. It is true to say that, the Respondent No.6 has given instructions to the

Complainant to work as Disaster Recovery Drill. The Complainant's team member configured the IP Address and port numbers for success of Disaster Recovery Drill. It is true to say that, the Complainant was given the work of service desk support in the system. It is true to say that, the Complainant was allocated the work of State Bank of India, Core Banking Solution Software Service. The role of Complainant was to assigning the work to team members. The job of the Complainant through his team members is to synchronize with the plant resources development testing and user acceptance tests. The team members were used to collect the data under the instructions of Complainant for the purpose of forecasting. The witness voluntarily stated that, the Complainant was Module Leader in SBI Work Flow project. The module leader is to instruct guide, supervise the team members and handle the billing the team members for the financial matters of the company. The designation given to the complainant as module leader by project and it is not given by the Respondent No.2. The witness has stated that, the Complainant was not only guiding the team members, but also supervising, giving instruction and taking care of their billing for the financial matter of the Company. It is specifically denied that, the Complainant was getting instruction for work from his team members as per email at Page No.298 and 299 filed along with the Complaint. He has further deposed that, he is not able to recollect whether leave of Miss Neha Galgale approved by reporting manager Shri. Prasaddatta Kulkarni. He has denied that, the Complainant was getting working instruction from his team members namely Nishma Jaiswal and Priya Alwanie. It is true to say that, the Complainant was involved in DIDR activity in 23rd and 24th October 2012. The Complainant was Incharge of the project SBI Work Flow to lead their team members. It is true to say that, the Project Incharge entrusted with responsibilities of supervisory, managerial and administrative functions. It is true to say that, the Complainant has evaluated and reviewed the performance appraisal of team members. The Complainant has power to review the annual compensation of team members and based on the said review, the Company provides the compensation. He has not produced the documents to show that the Complainant has reviewed the annual compensation. It is true to say that, the Complainant used to approve the work and hours of work or payment of salary to its team member. It is not true to say that, the Complainant was used to do the work of technical and clerical nature in the assigned project. It is true to say that, the Complainant was delegated the powers to take the business decisions with State Bank of India or any client. The Complainant was working under the supervision of Respondent Nos. 5 & 6, but not working under their control. The

Complainant was authorized to terminate the services of other employees through appraisal. The document showing the said fact is in the form of appraisals which is already on record for promoting internal request. He cannot produce the document to show that, the Complainant was doing the work of as mentioned in Paragraph No.14 of his affidavit.”

12. From the above, it is seen that in paragraph No.26 the learned Labour Court has dissected the contents in detail of the Complaint (ULP) No.283 of 2015 filed by Petitioner. Learned Labour Court has referred to specific paragraphs of the said complaint and noted all such relevant tasks and duties performed by the Petitioner which if perused cannot be said to be that of an ordinary workman. Infact the Petitioner’s main role was that of a supervisory nature and having managerial ability, competence and empowerment. The learned Industrial Court has specifically referred to paragraph Nos.13, 14, 32(xvii), 50 and 54 which clearly exemplify that Petitioner was indeed a Module leader on the project working in a supervisory position. In paragraph No.27, the learned Industrial Court has analysed the evidence of Petitioner below Exhibit ‘U-13’ and once again this evidence given by the Petitioner himself clearly proves that the nature of work performed by him was of a supervisory nature and group leader. There is a specific reference to paragraph Nos.50, 54, 55, 61 and 66 of the original complaint filed by the Petitioner and considering his cross-examination, both, *inter alia*, highlight his actual duties. This material evidence below Exhibit ‘U-13’ is something

which the Petitioner cannot do away with in the facts of the present case.

13. In paragraph Nos.28 and 29, the learned Industrial Court has considered the evidence given by witnesses of Respondent No.1 – Company and whether it proves that the Petitioner was working in a managerial capacity. Below Exhibit ‘C-15’ the witness of the Respondent No.1 has deposed the definition / meaning of ‘Module’. It is seen that ‘Module’ is one section of a particular application in which the Company engages certain number of team members. The evidence given by the witness of Respondent No.1 namely Mr. Rohit Bhandari below Exhibit ‘C-15’ is crucial and goes to root of matter to prove that the work ethic and character of work performed by the Petitioner was indeed supervisory and managerial in nature. It is seen that Petitioner was a Module leader of the assignment given to him. It is seen that Petitioner was empowered to grant planned leave to associates working with him in that module and his signature was appended on the time sheet. Necessary evidence is placed on record to that effect.

14. In paragraph No.29, the learned Industrial Court has analysed the evidence of the witness of Respondent No.1 – Company namely one Mr. Krishna Iyer who has deposed that Petitioner’s job was to analyse the nature of job, issues concerned, problems faced by

the customer and assign the same to team members working under him according to their expertise for resolution of the same. Infact it meant that Petitioner used to get all works done through his team members and in the process assist them and guide them also. Further it is seen that Petitioner was required to follow up escalated queries and issues relevant to work flow production monitoring which was a supervisory function. This particular witness has deposed that role of IT Analyst is also supervisory nature work and cannot be deemed to be merely administrative or clerical. It is also seen that Petitioner was involved in handling financial matters of his team members and the actual work of the Petitioner was to synchronize with his team members the work assigned to him as a Module leader in the SBI work flow project, to instruct, guide, supervise and handle the issues of the team members and thus as project incharge was entrusted with the responsibility of a supervisor having managerial and administrative functions. It has also come on record that Petitioner has evaluated appraisal performance of his team members. Once such power of reviewing the annual compensation of team members is done, based on the said review, the Company would provide compensation to the team members of the Petitioner. Hence Petitioner cannot say that he was working as a mere workman in order to go under the umbrella of the definition of workman under the ID Act. What is pertinent to note is the fact that Petitioner was delegated powers to take business

decisions with State Bank of India and / or any of its clients. Considering the above, the learned Industrial Court has clearly returned appropriate findings based on overwhelming evidence appreciated correctly while upholding the judgment of the Labour Court. Learned Industrial Court has categorically evaluated the same on the basis of material evidence placed on record so as to see whether there is infirmity in the judgment of Labour Court. The analysis done by the learned Industrial Court in Revision proceedings is accurate and no fault whatsoever was found in the judgment of the Labour Court which was based upon cogent and reasoned findings. Judgment passed by the learned Industrial Court hence does not call for any interference.

15. In view of the above, the judgment and order dated 04.09.2021 passed by the Industrial Court is sustained and confirmed.

16. As a consequence, challenge in the Writ Petition fails.

17. Writ Petition is dismissed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA
HANUMANT
SAWANT

Digitally signed
by HARSHADA
HANUMANT
SAWANT
Date: 2024.01.02
15:22:00 +0530