

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 31st OF JULY, 2023

MISC. PETITION No. 1772 of 2023

BETWEEN:-

**RITURAJ PARMAR S/O SHRI SHIV KUMAR
PARMAR RAW HOUSE NO. 70, ASHIRWAD VILAS,
NEAR D-MART, NEPANIA INDORE (MADHYA
PRADESH)**

.....PETITIONER

***(SHRI HARESH KUMA PARDASANI, LEARNED COUNSEL FOR THE
PETITIONER.)***

AND

**HDFC BANK BANK HOUSE, THROUGH ITS
CHAIRMAN, FIRST FLOOR, C.S. NO. 6/242
1. SENAPATI BAPAT MARG, LOWER PAREL,
MUMBAI (MAHARASHTRA)**

**HDFC BANK THROUGH ITS MANAGING
DIRECTOR, BANK HOUSE, FIRST FLOOR, C.S.
2. NO. 6/242, SENAPATI BAPAT MARG, LOWER
PAREL, MUMBAI (MAHARASHTRA)**

**HDFC BANK THROUGH ITS NATIONAL HEAD
HR BANK HOUSE FIRST FLOOR, C.S. NO. 6/242,
3. SENAPATI BAPAT MARG, LOWER PAREL,
MUMBAI (MAHARASHTRA)**

**HDFC BANK THROUGH ITS REGIONAL HEAD
AND HR BANK HOUSE FIRST FLOOR, C.S. NO.
4. 6/242, SENAPATI BAPAT MARG, LOWER PAREL,
MUMBAI (MAHARASHTRA)**

.....RESPONDENTS

(NONE PRESENT FOR THE RESPONDENTS.)

This petition coming on for orders this day, the court passed the following:

ORDER

[01] The petitioner has filed the present petition challenging the order dated 15.12.2022 whereby Regional Labour Commissioner (Central), Bhopal, Ministry of Labour and Employment has rejected his application submitted under Section 10 of Industrial Disputes Act, 1947 on the ground that he is not covered under the definition of workmen as per Industrial Disputes Act, 1947.

The facts of the case in short are as under:

[02] The petitioner was appointed by the respondents on 21.07.2008 and he worked up to 24.12.2015 thereafter, he joined another bank. Vide letter dated 29.08.2018 he was again appointed by the respondents as Assistant Vice President. According to the petitioner, he was assigned the job of contacting customers for the investment of their foreign currency in the respondent bank for information for the offer of vehicle loans, EMI etc. He was also required to go to the field to contact the customer. The work of contacting customers for giving information about the bank is a skilled job and he was required to send the report daily to the regional office which is a work of a clerical nature, hence for the name's sake he was designated as Assistant Vice President.

[03] Vide letter dated 12.10.2022, he has been terminated from the service without issuing any charge-sheet or domestic enquiry in violation of the principle of natural justice as well as non-compliance of Section 25 of the Industrial Disputes Act, 1947. The petitioner

approached the Deputy Chief Labour Commissioner (Central) for reference of the dispute to the CGIT/LC but without conducting any conciliation proceedings learned authority has turned down his application on the ground that he is not covered under the definition of workmen under the Industrial Disputes Act, 1947.

[04] Learned counsel for the petitioner submits that the petitioner was given the glorified designation of Assistant Vice President although, he was in a package of Rs.22 Lacs per annum but his job description has not been clearly mentioned in the appointment order. It is further submitted by the learned counsel that the petitioner was not given the job of supervisory nature, he was not given power by the respondents to sanction the leave, take disciplinary action in the matter of any subordinate employees of the bank.

[05] It is further submitted that under Section 10 of the Act of 1947 while conducting the conciliation proceedings the competent authority is only required to examine whether an industrial dispute exists or is apprehended at any time or not. Upon satisfaction that the dispute does exist, it is incumbent upon the authority to refer the dispute to the Tribunal or Labour Court as the case may be for adjudication. The learned Deputy ALC has travelled beyond the authority while rejecting the claim on the ground that the petitioner is not covered under the definition of the workman. Whether the employee comes under the category of workman is to be decided on the basis of the nature of job not by way of designation as held by the Apex Court in the cases of (i) *Anand Regional Co-op. Oil Seedsgrowers Union Ltd. v/s*

Shaileshkumar Harshadhai Shah [2006 LLR 1052], (ii) Sharad Kumar v/s Govt. of NCT of Delhi [AIR 2002 Supreme Court 1724], (iii) National Engineering Industries Ltd. v/s Shri Kishan Bhageria and others [Air 1988 Supreme Court 329] and (iv) All India Reserve Bank Employees Association v/s Reserve Bank of India [(1966) 1 S.C.R.] hence, the impugned order is liable to be set aside.

Conclusions:-

[06] Learned counsel for the petitioner is right in submitting that under Section 10 of the ID Act of 1947 the competent authority is only required to examine whether the industrial dispute is existing or not. The industrial dispute is defined in Section 2(k) of the Act of 1947 and according to which any dispute or difference between employer and employees, between employees and workmen or between workmen and workmen which is connected with the employment or non-employment or terms of employment. The petitioner is claiming himself to be a workman which is defined under Section 2(s) of the Act of 1947, the definition is reproduced below:

(s) “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.]

[07] According to the petitioner, the “workman” means any person who is 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 purpose of any proceeding under this Act in relation to industrial dispute, includes any person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, but does not include any such person who being employed in a supervisory capacity draws wages exceeding Rs.10,000/- per mensem and who exercised the power vested in him mainly of managerial in nature.

[08] Learned counsel for the petitioner argued that an upper limit of Rs.10,000/- is attached to a workman who is doing the work in a supervisory capacity but the petitioner was not given any duties of a supervisor, therefore, his salary is not liable to be considered for excluding him from the definition of the workman. It means the person employed in other than supervisory capacity is included in the definition of a workman irrespective of his salary or wages. In support of his contention he has placed reliance on the judgment passed by the Apex

Court in the case of *All India Reserve Bank Employees Association* (supra). As per the definition of workmen a person who is employed in a supervisory category and draws wages exceeding Rs.10,000/- per mensem is excluded from the definition of workmen.

[09] The petitioner was appointed as Vice President in a package of Rs.22 Lacs. In the case of *All India Reserve Bank Employees Association* (supra) the Apex Court considered the work of class-II employees in the bank and held that their work is of a supervisory character, these employees distribute work, detect fault, report for penalty, make arrangements for filling the vacancies, to mention only a few of duties which are supervisory and not merely clerical. The relevant paragraph of the aforesaid judgment is reproduced below:

The Reserve Bank has placed on record extracts from the manuals, orders, etc. relative to all Class II employees and on looking closely into these duties we cannot say that they are not of a supervisory character and are merely clerical or checking. These employees distribute work, detect faults, report for penalty, make arrangements for filling vacancies, to mention only a few of the duties which are supervisory and not merely clerical. Without discussing the matter too elaborately we may say that we are satisfied that employees in Class II except the Personal Assistants, were rightly classed by the National Tribunal as employed on supervisory and not on clerical or checking duties. In view of the fact that all of them now receive even at the start "wages" in excess of Rs. 500 per month, there is really no issue left concerning them, once we have held that they are working in a supervisory capacity.

[10] Therefore, the class-II employee exceeding Rs.500/- per mensem are working in a supervisor category. In the present case also the petitioner was Vice President and his wages were more than

Rs.10,000/- per mensem, therefore, he does not come under the definition of workman.

[11] Under the ID Act, a dispute cannot be filed directly to the Tribunal or Labour Court . the workman or employee is required to approach the ALC/RLC under section 10 of the Act. There fore at the inception check is necessary whether the employee who is seeking adjudication of dispute comes under the definition of the workman, then only he can be permitted to raise the dispute. If prima facie competent authority is satisfied that the person approached before him is not workman then he can be relegated to a competent forum instead of wasting valuable time of the court. Even the petitioner who was in the package of Rs. 22 laks cannot claim himself to be a workman. He can still approach the civil court as he is not remediless.

[12] With the aforesaid, Misc. Petition stands dismissed.

(VIVEK RUSIA)
JUDGE

Divyansh