



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7361 OF 2022

Shaikh Nawab Shaih Pasha

VERSUS

The State Of Maharashtra And Another

- Mr. S. K. Shaikh, Advocate for the Petitioner
- Mr. B. A. Shinde, AGP for the Respondent No. 1/State
- Mr. H. A. Patankar, Advocate for the Respondent No. 2

CORAM : R. M. JOSHI, J

DATE : FEBRUARY 17, 2025

PER COURT :

1. This Petition takes exception to the judgment dated 18.08.2018 passed by the Labour Court, Nanded in Application IDA No. 21/2015 filed under Section 33-C(2) of the Industrial Disputes Act.

2. A grievance is sought to be made by the Petitioner/Original Applicant contending that he was not given opportunity of cross-examining the witness of the Respondent, the application came to be rejected. He, therefore, seeks remand of the proceedings to the Labour Court for decision afresh.

3. Learned AGP and learned Counsel for Respondent opposes the said contention.

4. From the letter of appointment issued to the Petitioner/Original Applicant by Respondent, it seems that he was appointed as Junior Sales Manager, Agency in grade E 1. Applicant claimed termination by not permitting him to sign muster. On these grounds application is filed seeking balance salary of Rs. 4,32,000/-. Undisputedly, in the application filed before Labour Court Respondent raised issue that the applicant is not a workman within the meaning of Section 2(j) of the Industrial Disputes Act. The Labour Court framed issue as to whether the Applicant is a workman within the meaning of Section 2(b) of the Industrial Disputes Act, 1947. From the plea raised by the rival parties, there is a serious dispute as to whether the applicant is a workman. The letter of appointment indicates that applicant was appointed as 'Junior Sales Manager', though not conclusive, but a genuine dispute certainly exists with regard to the status of the applicant. There is no material to indicate that without recording evidence such issue could have been decided.

5. Since the application is filed under Section

33-C(2) of the Industrial Disputes Act, which is in the nature of execution proceeding, it was not open for the Labour Court to decide said contentious issue. Learned Counsel for the Petitioner was unable to satisfy this Court on the point that said substantial question of deciding the rights and contentions of the parties, could be gone into and decided by the Labour Court in such proceedings. In the facts of case, the labour Court ought to have called upon the parties to get the said issue adjudicated by the appropriate forum before application is entertained for deciding entitlement of applicant.

6. Though this Court finds substance in the contention of Counsel for the Petitioner that Applicant should be given opportunity to cross-examine the witness of Respondent, but since labour Court did not have jurisdiction to decide contentious issue of workman, there is no propriety to call upon parties to appear before the labour Court.

7. In view of above position, this Court finds no reason to relegate the application back to the Labour Court. It is however clarified that dismissal of

application as well as this Petition shall not be construed as the Applicant's right to get the amount claimed has been rejected. Similarly, this order would not preclude the Petitioner to raise and substantiate his claim that he is the workman and consequently entitled for the recovery of the amount as claimed by him in appropriate proceeding before a proper Forum.

8. Petition stands disposed of in above terms.

(R. M. JOSHI, J.)