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11-WP-12455-2021

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

11 WRIT PETITION NO. 12455 OF 2021

Abhiman Magha Wankhede

VERSUS

Superintendent Engineer, Maharashtra State Electricity Distribution Co
Ltd And Another

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Ms. Nima R.Suryawanshi, Advocate for the Petitioner.

CORAM : KISHORE C. SANT, J.

DATE : 15th JANUARY 2025

PC :-

1. Heard.
2. The Petitioner has approached this Court challenging the order passed by the learned Member, Industrial Court, Jalgaon, dated 2nd December 2019, dismissing the complaint of the petitioner for want of jurisdiction. Now the petitioner had approached the Industrial Court by filing Complaint (ULP) No.35 of 2017. By way of filing complaint, he prayed for declaration that the respondents have adopted unfair labour practice and prayed for quashing and setting aside the action taken against him of imposing penalty and also for other consequential reliefs.

3. It is the case of the petitioner that while working as Head Clerk in the Respondent-MSEDCL Jalgaon. In the said complaint, application below Exhibit U-10 came to be filed to frame the issues as to whether the complainant falls in the definition of “workman”. However, the learned Member passed an order dated 3rd August 2019 framing the said issue as issue No.1 be decided alongwith other issues.

4. While deciding the complaint, the learned Member has observed that, the complainant is not a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 by considering the cross-examination of the complainant. It is also observed that, the complainant was discharging the function which would show that he was working in supervisory or managerial capacity. The pay scale of the complainant was 17785-840-21985-885-44995. The basic salary was Rs.36,835/-. This position is not disputed. It is thus observed that the complainant does not fall within the definition of “workman” and dismissed the complaint for want of jurisdiction.

5. The learned Advocate for the petitioner vehemently argued that in

the complaint, itself, the petitioner has categorically made averments that he was not working in supervisory or managerial capacity. He was not having power to sanction the leave of his sub-ordinates. No power to take disciplinary action is vested in him. The work assigned to him was of clerical nature. The learned Member, Industrial Court has wrongly held that the petitioner is not a workman. She thus prays for quashing and setting aside the impugned judgment and order by restoring complaint before the Industrial Court.

6. This Court considered the definition given in Section 2(s) of the Industrial Disputes Act, 1947. This Court also considered the definition of “Employee” in MRTU and PULP, Act, 1971, which reads as below:

“Section 3(5) : [“employee” in relation to an industry to which the Bombay Act for the time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act; and in any other case, means a workman as defined in clause(s) of section 2 of the Central Act and a sales promotion employee as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976]”

7. Thus, the “employee” means the workman as defined in clause (s)

of Section 2 of the Industrial Disputes Act, 1947, which reads as under:-

“Section 2(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.]”

8. Looking to the observation by the learned Member, Industrial Court Jalgaon, this Court finds that the designation of the petitioner was shown as Head Clerk/Senior Clerk/Establishment Assistant. The nature of duties however shows that he was working in supervisory or managerial capacity. Under his control and supervision there were two senior clerks, five to six junior clerks and one peon, who was working

under the orders/directions of the petitioner. The learned Member also considered the salary is more than Rs.10,000/-.

9. Considering above, this Court is not convinced by the argument of the learned Advocate for the petitioner. This Court does not find any illegality or perversity in the order passed by the learned Member, Industrial Court, Jalgaon. Thus, there is no substance in the writ petition. Writ Petition stands dismissed.

10. Needless to say that, the petitioner is at liberty to avail any other remedy available under the law and for that purpose, the time consumed before the Industrial Court and before this Court, shall be considered as time spent in prosecuting the litigation *bonafide*.

11. Writ Petition stands disposed off.

[KISHORE C. SANT, J.]