

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13167 OF 2024

The Manager, M/s. Lavino Kapur
Cottons Pvt. Ltd.

....*Petitioner*

: *Versus* :

Ms. Revati Anant Vibhande

....*Respondent*

Mr. Arshad Sheikh, Senior Advocate *i/by. Mr. Rahul Oak for the Petitioner.*

Mr. Shafi Kazi *i/by. Ms. Sneha Pokle, for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 30 January 2025.

P.C. :

1) **Rule.** Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, the petition is taken up for hearing and final disposal.

2) The petition challenges the order dated 7 February 2024 passed by the Presiding Officer, 3rd Labour Court, Mumbai allowing application at Exhibit-U-6 filed by the Respondent seeking direction against the Petitioner-employer to produce various documents. The Labour Court has allowed the application directing the Petitioner to produce documents specified in para-4 of the order.

3) I have heard Mr. Sheikh, the learned Senior Advocate appearing for the Petitioner and Mr. Kazi the learned counsel appearing for the Respondent.

4) I have also gone through the impugned order, as well as the relevant records of the case produced alongwith the petition.

5) The Respondent was initially appointed on the post of System Administrator vide appointment letter dated 4 June 2005. She is aggrieved by issuance of chargesheet dated 5 February 2013 and termination letter dated 22 January 2022 and accordingly an industrial dispute has been raised at her instance. In her Statement of Claim, Respondent confirmed the position that she was working as System Administrator. In the entire Statement of Claim, there is no averment that she was also working as an Accounts Assistant or that she performed the job of accounting data entries as per the instructions or directions given by her superiors. However, after the Petitioners filed Written Statement pleading that Respondent No.1 does not fit into the definition of the term 'Workman' on account of predominant nature of her duties as that of System Administrator, Respondent was advised to file application at Exhibit-U-6 raising following pleadings :

That the Second Party was appointed as System Administrator/Accounts Assistant on 04.06.2005. The Second Party states that though she was designated as "System Administrator/Accounts Assistant", she was doing job of accounting data entry as per the instructions and directions from her superior i.e. Finance Controller and Director of the Company.

6) In her application, the Respondent sought production of the following documents :

The Hon. Court therefore be pleased to direct the First Party to produce following documents on record :

1. Purchase Orders both Local (HO), and Imported Goods (HO) from the period 2005 till 05.02.2013 which were prepared

by the Second Party and authorised by the Administration Officer/Finance Controller and/or Director.

2. Soft copy of Data/Data Backup of Head Office (HO) i.e. Tally 7.2 & Tally EPR 9 Company Data Backup taken on CDs & DVD of the period since 2005 till 05.02.2013 which were maintained by the Second Party wherein various expense bills pertaining to legal, professional, freight, clearing/forwarding, telephone, VAT, commission and miscellaneous bills have been entered in the tally as the Second Party was doing data entry of all the above bills after the said bills were approved by her superiors.

3. Purchase-expense (HO) bill files original hardcopies of the period from 1.4.2005 to till 5.2.2013.

7) In my view, the pleadings in the application at Exhibit-U-6 that she was appointed as System Administrator/Accounts Assistant on 4 June 2005 appears to be contrary to her assertion in the Statement of Claim that *'The Second Party Workman Ms. Revati Anant Vibhande, was working as a "System Administrator" Since 23rd June 2005 to 5th February 2013 (7yrs & 8 months)'*. It thus clearly appears to be a case of improvement of pleadings. In such circumstances, the Respondent cannot be permitted to set into motion a roving enquiry for proving that she used to do the job of data entry while holding the post of System Administrator. The documents sought to be produced at her instance are not only stale and voluminous but also vague. The Petitioner-employer cannot be directed to produce voluminous documents pertaining to the years 2005 to 2013 relating to all purchase orders of local and imported goods, as well soft copies of data and data backup maintained in Tally software during 2005-2013. Respondent has expected the Petitioner-employer to produce purchase-expense bill files from 2005 to 2013. Petitioner has taken up a specific plea that most of these documents are not available on account of passage of time. In my view, the burden of proving that Respondent is a Workman lies

squarely on her. She cannot institute a roving enquiry by directing the employer to produce voluminous documents relating to its operations between 2005 to 2013 just for the purpose of proving that she may have performed the duties of data entry operations while holding the post of System Administrator. Infact, there appears to be a specific admission by the Petitioner-employer in the Written Statement that on some occasions, other work was assigned to her but her predominant duties were relating to System Administrator and that she was mainly responsible for ensuring that the Tally System of Accounting functioned smoothly. It would be for the Respondent to produce evidence to prove that her predominant duties was that of data entry operations and not System Administrator. For doing so, the employer cannot be expected to produce voluminous, stale and vague information pertaining to the year 2005 to 2013. Production of such voluminous records and data would also drive the litigation in an altogether different direction. In my view, the Labour Court has erred in allowing the application filed by the Respondent.

8) Mr. Kazi has relied upon judgment of the Apex Court in the case of *Gopal Krishnaji Ketkar Versus. Mohamed Haji Latif & Ors.*¹ in support of his contention that a party in possession of best evidence which would throw light on the issue in controversy cannot withhold and that the Court must draw an adverse inference against such party. There can be no dispute about the above principle. However, in the present case, whether the Respondent-employee can seek production of voluminous data and records of the employer from the year 2005 to 2013 comprising of all purchase orders, data relating to Tally Software and purchase-expense is the question and the answer to my mind, appears to be in the negative. Under the garb of the employer holding the relevant records, it would be impermissible to seek production of

¹ AIR 1968 SC 1413

such stale and voluminous records, which may not be even in possession of the Petitioner.

9) I am therefore of the view that the Labour Court erred in allowing the application filed by the Respondent at Exhibit-U-6. The order dated 7 February 2024 is accordingly set aside. Respondent would however be at liberty to lead such evidence as may be necessary for the purpose of proving that she performed work of data entry operations while holding the post of System Administrator.

10) With the above directions, the Writ Petition is **allowed and disposed of**. Rule is made absolute. There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]