

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1211 OF 2025

Brihan Mumbai Mahanagarpalika

....Petitioner

V/S

Municipal Mazdoor Union

....Respondent

Mr. Santosh Parad *for the Petitioner.*

Mr. P.M. Mokashi *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 06 FEBRUARY 2025.

P.C.:

1. The present Petition filed by the Municipal Corporation challenging orders dated 29 February 2024 and 2 July 2024 passed by the learned Presiding Officer, Industrial Tribunal, Mumbai.

2. It appears that at the instance of Petitioner, the issue about status of the employee, whose cause is espoused by the Respondent-Union, as workman was directed to be decided as a preliminary issue. The Respondent-Union had objection to such issue being decided as preliminary issue. The law in this regard is fairly well-settled by the judgment of the Apex Court in ***D.P. Maheshwari vs. Delhi Admn.***, 1984 AIR SC 153 in which it is held that the Labour/Industrial Courts must decide the issue of

status of workman alongwith decision of Reference/Complaint. I therefore, do not see any reason why any interference is warranted for not deciding the issue about status as workman as a preliminary issue.

3. The Respondent-Union filed application at Exhibit U-18 for deletion of issue No.6 about status as workman. The Industrial Tribunal has proceeded to allow the application at Exhibit U-18 by relying on judgment of this Court in *George Thomas Thakkeyil vs. M/s. Sci Tech Centre & Ors.*, Writ Petition No.2983 of 2004 decided on 15 March 2007, in which it is held that once the enquiry is shown to have been held under the provisions of Model Standing Orders, the employer is then precluded from questioning status of such an employee as workman. However in the present case, there appears to be a unique situation where the concerned employee was governed by Model Standing Orders at the relevant time and accordingly enquiries were conducted against her under the Model Standing Orders. However as on the date of making of Reference, she was already promoted as Senior Auditor and Accounts Officer on 18 May 2012 and continued as such till her retirement on 31 October 2015. It is Petitioner's case that since she was performing supervisory nature of duties as on date of making of Reference, she did not fit into definition of the term 'workman' under section 2(s) of the Industrial Disputes Act, 1947 (**the Act**). This position is disputed by the Respondent-Union.

4. In my view, considering the above dispute, issue No.6 could not have been deleted by the Industrial Tribunal, which will have to decide the issue of status of the employee to maintain the Reference, if she was already promoted in alleged supervisory category as on the date of making Reference.

5. The impugned orders are accordingly set aside partly. Issue No.6 shall be answered by the Industrial Tribunal finally at the time of deciding the Reference.

6. The Industrial Tribunal is requested to expedite the proceedings of the Reference considering the position that the same is pending for the last 11 long years.

7. With the above directions, Writ Petition is partly allowed and **disposed of**.

(SANDEEP V. MARNE, J.)

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