

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3133 OF 2025

G4S Secure Solutions India Pvt. Ltd.

....*Petitioner*

: *Versus* :

Sadashiv Ram Chandra Havalkdar
and Anr.

....*Respondents*

Alongwith

WRIT PETITION NO. 3281 OF 2025

G4S Secure Solutions India Pvt. Ltd.

....*Petitioner*

: *Versus* :

Yogesh Eknath Shilimkar & Anr.

....*Respondents*

Mr. Jitendra M. Pathade a/w. Ms. Priyanka R. Singh, for the Petitioner.

Ms. A.A. Nadkarni, AGP for Respondent No.2-State.

CORAM : SANDEEP V. MARNE, J.

Dated : 24 March 2025.

P.C. :

1) These two petitions are filed challenging the judgments and order dated 10 October 2024 passed by the Member, Industrial Court, Pune allowing Revision Application (ULP) No.42/2022 and 43/2022 and setting aside the orders passed by the Labour Court on 25 March 2022, by which the Labour Court had held that the Complaints of unfair

labour practice to be not maintainable on the ground that the Respondents did not fit into the definition of the term '*workman*' under Section 2(s) of the Industrial Disputes Act, 1947 (**ID Act**) and '*employee*' as defined under Section 2(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**). The Industrial Court has reversed the finding of the Labour Court by impugned judgment and order dated 10 October 2024, in which it has held that the Petitioners are '*workman*' as defined under Section 2(s) of the I.D. Act and '*employee*' as defined under Section 2(5) of the MRTU & PULP Act.

2) It is the case of the Petitioners that since Respondents were working as Security Supervisors, they were supervising the other security guards and therefore could not be treated as '*workman*' within the meaning of S.2(s) of the I.D. Act. By now it is well settled position of law that mere designation does not decide the nature of employment. The Respondents filed their evidence before the Labour Court and it would be relevant to reproduce para-3 of the evidence filed by the Respondent-Sadashiv Ramchandra Havaladar:

3. I say that though I was promoted and designated as a security supervisor, I was actually required to perform duties of a Security Guard. I was thus required to prepare gate pass for visitors, get the vehicles of visitors parked at proper place, physically check, verify the incoming and outgoing material movement as per the challans, prepare attendance sheet of the employees and prepare the man power report, carry out the loading of scrap and checking the activity in respect of the same, take rounds of the premises of the company, check the fire system, take physical inspection of the security arrangement at the gate and considering the nature of work and activities of the particular company look after the security of the premises of the client company and see that it is protected from any incidence of theft, fire etc. I was required to work in shifts and was reporting to Senior Security Supervisor and Security chief executive.

3) Similar evidence was led by the other Respondent-Yogesh Eknath Shilimkar. Thus specific evidence was led before the Labour Court that though the Respondents were designed as Security Supervisors, they were actually performing duties of security guards. They stated in their evidence that they used to prepare gate passes for the visitors, assist the visitors in parking the vehicles, physically check and verify the incoming and outgoing material movement as per the challans etc. Thus evidence was led that the predominant nature of duties of the Respondents continued to remain as that of Security Guards, notwithstanding their designations as Security Supervisors.

4) Mr. Pathade has strenuously relied upon the statements made by the Respondents in their respective cross-examinations. So far as Respondent-Sadashiv Ramchandra Havaladar is concerned, he denied the suggestion that he used to supervise or control the security guards posted under him. He also did not agree with the suggestion that he had power of recommending leave or transfer of a Security Guard. Perusal of the cross-examination of the Respondent-Sadashiv Ramchandra Havaladar would indicate that even a suggestion was not given to him that the statements made by him in para-3 of his affidavit of evidence were erroneous. No suggestion was given to him that he never performed duties of Security Guard. It would be apposite to reproduce cross examination of the said Respondent, which reads thus :

२१. हे म्हणणे खरे आहे की, जाब देणार कंपनीने मला दिनांक ०२/०९/२०१४ रोजीचे आरोपपत्र व दिनांक ०८/०८/२०१४ रोजीचे निलंबनपत्र दिले असताना मी सदर कंपनीत सिक्युरिटी सुपरवायझर या पदावर कार्यरत होतो. हे म्हणणे खरे आहे की, सदर आरोपपत्राचा मराठी अनुवाद कंपनीने मला दिलेला आहे. हे म्हणणे खरे नाही की, मी सिक्युरिटी सुपरवायझर असल्यामुळे माझे हाताखाली काम करणा-या गार्डस्वर माझे नियंत्रण व देखरेख होती. हे म्हणणे खरे आहे की, गार्ड, हेडगार्ड व सुपरवायझर असा पदांचा चढता स्तर आहे. हे म्हणणे खरे आहे की, सर्व गार्डचा प्रमुख हेडगार्ड असतो आणि सर्व गार्डस्कडून काम करून घेण्याची जबाबदारी सुपरवायझरची असते. एखाद्या गार्डला रजा अथवा बदली पाहिजे असल्यास त्याबाबतच्या

अर्जाची शिफारस सुपरवायझरमार्फत मॅनेजमेंटकडे केली जाते किंवा कसे याबाबत मला सांगता येणार नाही.

5) Thus, in so far as Respondent-Sadashiv Ramchandra Havaladar is concerned, Petitioner did not dispute the evidence led by him that he was predominantly performing duties of Security Guard though he was designated as Security Supervisor.

6) Mr. Pathade has strenuously relied upon cross-examination of the Respondent-Yogesh Eknath Shilimkar in which following statements are made by him:

३) आता मला चौकशी प्रक्रियेमधील नि. क. यु-१७ वरील पान क.३१ दाखविण्यात आलेले आहे. ती मी माझ्या उलट तपासणीमध्ये मी करीत असलेल्या कामांची यादी दिलेली आहे. ती हीच आहे. व्यवस्थापनाकडे गार्ड, हेड गार्ड, सिक्युरिटी सुपरवायझर असे पदाचे स्थर आहेत. हे म्हणणे बरोबर आहे की, सिक्युरिटी सुपरवायझरचे हे काम आहे की, त्याच्या खालचा जो हेड गार्ड आहे तो इतर गार्डकडून काम करून घेतो की नाही, हे पाहणे आहे. हे म्हणणे बरोबर आहे की, त्याचप्रमाणे सिक्युरिटी सुपरवायझरचे हेही काम आहे की, एखाद्या गार्डची रजा असेल तर तो अर्ज पुढे करणे, तसेच एखाद्या गार्डची बदली हवी असेल तर त्यासंबंधीचा अर्ज पुढे करणे व तसेच गार्डची हजेरी मांडणे. हे म्हणणे खरे नाही की, मी सिक्युरिटी, सुपरवायझर म्हणून काम करीत असल्याकारणाने मी या कामगार न्यायालयामध्ये तक्रार दाखल करू शकत नाही. हे म्हणणे खरे नाही की, त्याचप्रमाणे मी माझ्या प्रतिज्ञापत्रामध्ये चौकशीबद्दल व चौकशीच्या अहवालाबद्दल जो मजकूर लिहिलेला आहे तो चुकीचा व न्यायालयाची दिशाभूल करणारा आहे. मी जे आरोप केलेले आहेत त्या आरोपासंबंधी माझ्या शब्दांशिवाय या न्यायालयात कोणताही पुरावा आणलेला नाही यावर साक्षीदार असे म्हणतात की, त्यासंबंधीचे पुरावे मी चौकशी अधिकारी यांना दिलेले आहेत. उलट तपासणी पूर्ण.

7) As observed above, even Yogesh Eknath Shilimkar had made specific statements in para-3 of his affidavit of evidence as was done by Sadashiv Ramchandra Havaladar. Thus, Respondent No.1 had led specific evidence that he continued discharging duties and responsibilities as Security Guard notwithstanding his designation as Security Supervisor. Again, while conducting cross-examination of Respondent-Yogesh Eknath Shilimkar, no suggestion is given to him that the statements made by him in para-3 of the Affidavit of evidence were false. No suggestion was given to him that he did not perform duties and responsibility as a Security Guard while being designated as

Security Supervisor. So far as the alleged admissions given in the cross-examination are concerned, it appears that Respondent-Yogesh Eknath Shilimkar admitted that one of the duties of Security Supervisor is to ensure that the Head Guard under whom other guards are posted gets the work executed from other guards. He has also admitted that Security Supervisor also looked after the duties of forwarding the applications for leave/transfer and to report attendance of other guards. However, what is admitted is not either recommendation or sanction of leave or transfer but merely the act of forwarding the applications for leave or transfer. Merely because the Security Supervisor forwards application for leave/transfer, the same would not make him a supervisor in strict sense. It is only if he had power of either recommending or sanctioning leave/transfer, supervisory nature of duties could have been inferred. Similarly, a Security Supervisor may supervise duties of other guards. The issue is whether the same is predominant nature of his duties. As observed above, Respondent-Yogesh Eknath Shilimkar led specific evidence that he actually performed the job of Security Guard by preparing gate passes for visitors, verifying vehicles for parking of visitors and physical checking and verification of incoming and outgoing material movement as per challans. These are all jobs which are essentially performed by Security Guards. As observed above, these statements made by the Respondents are not challenged in their cross-examinations in any manner. Therefore, even if a Security Supervisor may at times be ensuring that the Head Guard gets the work performed from other Security Guards, the same would not *ipso-facto* become his predominant duties. Considering the evidence on record, it cannot be contended that the employment of Respondents in the present petitions were in supervisory nature of duties. There is a marked difference between the concept of '*employment in supervisory capacity*' and '*performing supervisory work*'. Even a person performing supervisory work gets covered by

definition of the term '*workman*' within the meaning of Section 2(s) of the I.D. Act. What is required to be proved is employment in supervisory capacity and not performance of supervisory work. Upon going through the evidence on record, particularly absence of any challenge to the evidence led by the Respondents about they performing the duties of Security Guard, it is difficult to believe that their employment was in supervisory capacity.

8) Mr. Pathade, has relied upon judgment of the Hon'ble Supreme Court in *Lenin Kumar Ray Versus. M/s. Express Publications (Madurai) Ltd.*¹ The Apex Court has held in paras-14, 15 and 16 of the judgment as under :

14. During the course of examination, the employee deposed as W.W.1 that he was not an executive cadre employee and there were senior officers to supervise and control his work. But, in the cross-examination, he asserted that he was supervising the work of two juniors who were working under him. According to M.W.1- Senior Manager of the management, the employee was an executive of the management and the management appointed two Junior Engineers and their works were being supervised by the said employee.

15. The law is well settled that the determinative factor for "workman" covered under section 2(s) of the I.D. Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the person claiming to be a "workman" within the definition of section 2(s) of the I.D. Act.

16. In the present case, there is no specific document adduced relating to the actual work and functions performed by the employee. In the absence of any concrete material to demonstrate the nature of duties discharged by the employee, the employment orders issued by the management will have to be taken into consideration and as per the same, the employee was appointed as Junior Engineer and was promoted as Assistant Engineer, on the administrative side. It is the evidence of M.W.1 that the employee was supervising the work of two junior

¹ Civil Appeal No.11709/2024 decided on 21 October 2024

Engineers, who were working under him, which was also admitted by the employee in his cross examination, as W.W.1. Even according to the employee, the nature of duties and functions discharged by him was of supervisory. As such, applying the pre-amended provision of section 2(s), since the employee was terminated from service on 08.10.2003 and was drawing salary of more than Rs.1,600/-, he does not come within the definition of "workman". Therefore, we hold that the employee is not a "workman" as defined under section 2(s) and is not covered by the provisions of the I.D. Act. In view of the same, the order of the High Court upholding the finding of the Labour Court that the employee was a "workman" within the definition of post-amended section 2(s), is liable to be set aside.

9) In case before the Apex Court, evidence was led that the employee concerned was actually supervising the work of two juniors who were working under him. It had come in evidence that he was initially appointed as Junior Engineer and was further promoted as Assistant Engineer on the administrative side and was supervising the work of two Junior Engineers. The employee apparently admitted that the nature of duties and functions discharged by him were of supervisory nature. It is in the light of these facts that the Hon'ble Supreme Court held that the employee therein does not fit into the definition of '*workman*' within the meaning of Section 2(s) of the I.D. Act.

10) Mr. Pathade, would submit that entire burden of proving that Respondents were workmen rested purely on their shoulders and that on account of failure on their part to lead concrete evidence of performance of duties and responsibility as defined under sub-section 2(s) of the I.D. Act, it was not even necessary for the Petitioners to lead any evidence to disprove the contention raised by Respondents before the Labour Court. In my view, the Respondents have clearly discharged their burden by leading specific evidence that they were predominantly discharging duties of Security Guard despite being designated as

Security Supervisors. Petitioners did not even challenge the said statements made in the examination-in-chief of both the workmen. In that view of the matter, the burden clearly shifted on the Petitioners to prove that the employment of the Respondents was predominantly in supervisory capacity. Therefore, the judgment of the Apex Court in *Lenin Kumar Ray* does not really assist the case of the Petitioners.

11) After considering the overall conspectus of the case, I am of the view that no case is made out for interference in the impugned judgment and orders passed by the Industrial Court, which merely results in entertainment of Complaints filed by the Respondents and decision thereof on merits. Both the petitions are accordingly **rejected**.

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[SANDEEP V. MARNE, J.]