



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION No. 1403/2024

PETITIONER : **Ujwala Dattatraya Deshpande,**
Aged about 50 years,
178, Hersh Residency, NELCO Society,
Subhash Nagar, Nagpur – 440 022

Vs.

RESPONDENT : **M/s Indo Rama Synthetics (I) Ltd.,**
A-31, MIDC Industrial Area, Butibori,
Nagpur – 441 122
Through its Vice President (HR)

Mr. S.D. Thakur, Advocate for the Petitioner
Mr. R.B. Puranik, Senior Advocate Advocate a/b Mr.
M.R. Puranik, Advocate for Respondent

CORAM: **SACHIN S. DESHMUKH, J.**

Date of reserving the judgment : **04.08.2025**
Date of pronouncing the judgment : **22.08.2025**

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The petitioner raises an exception to the order rendered by the Industrial Court upsetting the order of the Labour Court allowing complaint presented by employee. The complainant, who joined the services in the year 1995, as a Trainee Chemist was eventually appointed as

Senior Chemist in the year 2005 and thereafter as Senior Assistant in the Logistic Department. The complainant on account of termination presented a complaint under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946.

3. The employment in the Logistic Department and discharge of duties to effect entries in the computer is not controverted by the employer. The relevant issue is to determine whether the complainant falls within the definition of “employee”. The work which the complainant has discharged to effect entries in computer cannot be regarded as technical work or managerial work, as such cannot be excluded from the purview of the definition of employee. As such, the complaint presented a complaint under the BIR case was maintainable. Accordingly, the Labour Court has appreciated the same in proper perspective and allowed the complaint.

4. The Industrial Court declaring that the termination as illegal and it leads to resort to unfair labour practice directed to reinstate the applicant. The order rendered by the Labour Court was subject matter of challenge in BIR Appeal under Section 84 of the

Maharashtra Industrial Relations Act, 1946 (For short “The Act of 1946”). The Industrial Court while endorsing the order of the Labour Court, dismissed the appeal presented by the employer.

5. Eventually the order of the Industrial Court was subject matter of challenge in Writ Petition No. 5971/2022, before this Court, wherein the order of the Industrial Court came to be quashed and set aside with a specific finding that both the Courts below have incorrectly interpreted the provisions of the statute while ignoring the primary appointment of the complainant was as Chemist is not considered in its proper perspective, as such, the matter was remitted back to the Industrial Court. Thereafter, the Industrial Court has rendered the judgment dismissing the complaint, which is subject matter of challenge in the present petition.

6. Mr. Thakur, learned counsel for the petitioner contends that after the initial appointment, which was in the year 1995, the petitioner joined the services as Trainee Chemist. Thereafter, Senior Chemist and eventually the petitioner worked as Senior Assistant in Logistic Department at the time of termination in the year 2009.

The nature and duties discharged, at the relevant point of time ought to be taken into account so as to consider the expression “employee” as is contemplated under the Act of 1946. Therefore, the complaint under Sections 78 and 79 of the Act, is tenable. It is further contention of Mr. Thakur, learned counsel for the petitioner that it was not open for the Industrial Court to take into account the initial appointment and the status of the petitioner at the time of termination as relevant for all the purposes, including the definition whether the petitioner can be regarded as employee as contemplated under Section 3(13) of the Act of 1946, as such, the complaint is maintainable. In order to substantiate the aforesaid contentions, Mr. Thakur, learned counsel has placed reliance on the following judgments.

- i) *(1994) 3 SCC 510, S.K. Maini Vs. M/s Carona Sahu Company Limited and others;*
- ii) *(2001) 7 SCC 394, Hussan Mithu Mahasvadkar Vs. Bombay Iron and Still Labour Board and another;*
- iii) *(2007) 7 SCC 171, C. Gupta Vs. Glaxo-Smitkline Pharmaceuticals Ltd.;*

iv) *1990(1) LLJ 98, Bombay Dyeing and Manufacturing Company Ltd. Vs. R.A. Bidoo and Others;*

v) *1970 (3) SCC 378, Burmah Shell Oil Storage and Distributing Co. of India Ltd. Vs. The Burmah Shell Management Staff Association and others.*

7. It is further contention of the counsel for the petitioner that since the respondent is an Industrial Establishment as defined in Section 25L(a)(i) of the Industrial Disputes Act, 1947, therefore, mandatory provisions of Section 25N of the Act, are applicable, are not adhered by the respondent-industry at the time of retrenchment. Therefore, Section 25N(7) of the Act, which is self-operative, since there is no application for permission to effect retrenchment, it necessarily has to be deemed to be illegal. Resultantly, the employee is entitled for all benefits under the law for the time being in force as no notice of retrenchment is given to the petitioner employee.

8. Per contra, Mr. R.B. Puranik, learned Senior Counsel appearing for the respondent has supported the order of the Industrial Court submitting that the determinative factor as contemplated under Section 3(13)

of the Act of 1946 primarily is the appointment of the employee and the burden heavily lies on the employee. Since the issue revolves around the definition of “employee”, it would be appropriate to refer the definition which reads as under :

3(13) : “employee” means any persons employed to do any skilled or unskilled work for hire or reward in any industry, and includes -

(a) a person employed by a contractor to do any work for him in the execution of a contract with an employer within the meaning of sub-clause (e) of clause (14);

(b) a person who has been [dismissed, discharged or retrenched or whose services have been terminated from employment] on account of any dispute relating to change in respect of which a notice is given or an application made under section 42 whether before or after his [dismissal], discharge, retrenchment or, as the case may be, termination from employment];

but does not include -

(i) a person employed primarily in a managerial, administrative, supervisory or technical capacity [drawing basic pay (excluding allowances) exceeding [six thousand five hundred rupees per month];]

(ii) any other person or class of persons employed in the same capacity as those specified in clause (I) above irrespective of the amount of the pay drawn by such persons which the State Government may, by notification in the Official Gazette, specify in this behalf.”

9. It is submitted by Mr. Puranik, learned Senior Counsel that the burden is upon the petitioner to prove

case that the petitioner was an employee as contemplated under the Industrial Disputes Act and not an employee within the meaning of Section 3(13) of the Act of 1946, unless the petitioner satisfies the requirement of Section 3(13) of the said Act, the petitioner cannot maintain the complaint as is presented. In support of the same, Mr. Puranik, learned Senior Counsel has placed heavy reliance on the following judgments.

- i) *Writ Petition No. 6026 of 1987, The Bombay Dyeing & Manufacturing Co. Ltd. Vs. R.A. Bidoo and others;*
- ii) *2005(3) Bom.C.R. 645, A.K. Patel, Vs. Indian Hotels Co. Ltd.;*
- iii) (2007) 7 SCC 171, C. Gupta Vs. Glaxo-Smithkline Pharmaceuticals Ltd.;
- iv) *2001(3) L.L.N. 550, Northcote Nursing Home (Private) Ltd. Bombay and another Vs. Dr. Smt. Zarine H. Rahina and another.*

10. Having heard the learned counsel for the litigating sides, the perusal of the complaint presented by the petitioner, although it is put-forth that the petitioner

falls within the definition of Section 3(13) of the Act of 1946. On the basis of pleadings, it was incumbent upon the petitioner to establish the case that the duties performed by the petitioner fall within definition of the workman. Unless such initial burden is dispelled by the petitioner as has been held by this Court in *Bombay Dying*, cited *supra*, more particularly para 13, wherein it is held that there is a difference between the definition of workman under Section 2(s) of the Industrial Disputes Act and employee as contemplated under Section 3(13) of the MIR Act. Para 13 of the said judgment reads as under :

13. Incidentally it should be noted that the definition of "workman" to be found in Section 2(s) of the Industrial Disputes Act is materially so different from the definition of "employee" contained in the BIR Act that it does not afford any assistance in understanding the definition of "employee" contained in the BIR Act. In *Vilas Gangaram v. S. D. Rane*, (1982-II-LLJ-123) the definition of the term 'employee' contained in the BIR Act was examined in great details and it was held that the said term 'employee' in Section 3(13) is not confined only to persons engaged in manual work, but it also takes in its import persons doing clerical work. "In the substantive part of the definition the term 'employee' is defined in generic terms. It includes any person employed to do any skilled or unskilled work for hire or reward. The words and expressions used in this definition clause are all comprehensive. The word 'any' means each and every or all" .

11. Admittedly, the petitioner has not placed any material to establish the nature of work which the petitioner has really discharged, except the assertion that the petitioner was performing the clerical work throughout the employment. The fact that the petitioner has admitted in her cross-examination about qualification and appointment for the post of Chemist.

12. The discharge of duties in the Quality Control Department, which essentially involves the work of quality control of raw material and the intermediary product and the final product. When the petitioner was confronted with the water test report of which the chemical analysis was done bears signature of petitioner, the petitioner has responded that the tests were carried by the officer.

13. Thus, primarily, the work which was entrusted to the petitioner and discharged was of chemical analysis, which necessarily requires technical knowledge being technical in nature, same is rather expressly excluded by virtue of exclusion clause incorporated in Section 3(13). Therefore, the judgments on which heavy reliance is placed by the learned counsel for the petitioner are of no assistance to the petitioner.

14. The person employed primarily in managerial, administrative or supervisory or technical capacity and who is drawing the basic pay excluding allowance exceeding Rs.6500/- per month, is specifically excluded from the purview of definition of employee. The exclusion is consciously incorporated in Section 3(13) of the Act of 1946 applies to the petitioner. As held hereinabove the petitioner has not discharged this primary burden in relation to claim that fits in Section 3(13) of the Act of 1946 on both the counts that the discharge of the duties, vis-a-vis, drawing of salary which exceeds the quantum of amount of Rs.6500/-, therefore the petitioner falls in categories those are expressly excluded. There is an admission on the part of the petitioner that the petitioner is in receipt of salary i.e. Rs.10,186/-. The primary job of the petitioner was to do the chemical analysis, which requires technical knowledge and by any stretch of imagination same cannot be regarded as clerical function unequivocally establishes that the petitioner was engaged and employed in technical capacity, therefore, the exclusion clause applies. As such, the petitioner has utterly failed to establish the petitioner is employee under Section 3(13) of the Act of 1946, resultantly, no error

could be noted in the judgment of the Industrial Court and as such, the petition stands dismissed. No order as to costs.

Rule is discharged.

(SACHIN S. DESHMUKH, J.)

MP Deshpande