



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

WRIT PETITION NO.8588 OF 2022

(Shriniwas Spintex Industries Pvt. Ltd., Wani thr. its Director Vs. The Conciliation
Officer-cum-Asstt. Commissioner of Labour Nagpur and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. D. M. Kakani, Advocate for Petitioner.
Mr. H. D. Dubey, AGP for Respondent No.1/State.

CORAM: R. M. JOSHI, J.

DATE: 9th JULY, 2025.

1. None for respondent nos.2 to 4 in spite of service of notice of final hearing of the petition. Their absence indicates that they are not interested in opposing the petition.

2. At the outset, learned Counsel for the petitioner makes on instructions makes statement that the challenge to the impugned order passed by the Conciliation Officer under the provisions of the Maharashtra Industrial Relations Act, 1946 is restricted to the appointment of Shri Roshan Wasudeo Wagh as elected representative of the employee. It is further specifically clarified that petitioner does not wish to challenge the election of other employees by the said order.

3. It is the contention of the counsel for the petitioner that Roshan was appointed as Apprentice on the establishment of the petitioner for the period from

22.06.2021 to 01.02.2022. It is his submission that since he being elected as elected representative of the employees, though his term of Apprenticeship is over on 01.02.2022, he continues to represent the employees of the establishment. It is his submission that the Conciliation Officer has committed serious error in permitting an Apprenticeship to become elected representative of the employees. He has drawn attention of the Court to the findings recorded by the Conciliation Officer to the effect that the provident fund is deducted from his salary and therefore, he is a regular employee of the petitioner company. In this regard he has made reference to the documentary evidence on record which shows that no salary/wages were paid to Roshan and that no deduction of provident fund was also done from the stipend paid to him. It is his submission by referring to the provisions of Section 2(3)(13) of the Act that an “employee” according to the said provision would be a person who is employed to do any skilled or unskilled work for hire or reward and it impliedly excludes an Apprentice, who is a trainee. It is his submission that the order impugned has created an unprecedented situation that the person who is not on the establishment of the petitioner company in any capacity is representing the workmen of company. To support his submissions he placed reliance on the judgment of the Division Bench of this Court in case of *Sunflag Iron and Steel Company Ltd. Nagpur v. State of Maharashtra, through Secretary, Department of Labour, Mumbai and Ors. [2008 III CLR 983]*.

4. Learned AGP sought to support the impugned order.

5. There is no dispute about the fact that under Section 101 of the Act the authority lies with the Assistant Commissioner of Labour and Conciliation Officer to declare the protected employee in the establishment govern by the Act.

6. As far as the election of Roshan is concerned a specific objection was raised by the petitioner company before the authority that he is not an employee being Apprentice. The Assistant Commissioner of Labour in the order impugned has recorded the finding that though he is a trainee, his name appears on the muster roll and that provident fund is deducted. It is held on these grounds that he is regular employee of the company. The documents on record however, clearly indicate otherwise that Roshan was appointed as Apprentice for training for specified period from 22.06.2021 to 01.02.2022. Moreover, he was not paid any salary but was paid stipend. Thus findings recorded by the Assistant Commissioner of Labour are therefore, contrary to the material evidence on record.

7. Perusal of definition of employee under Section 13(3) of the Maharashtra Industrial Relations Act, indicates that in order to treat any person as an employee he must be employed to do any skilled or unskilled work. Even a contractor employee who is performing such work is considered as an employee. Once person has been appointed

as a trainee, he cannot be said to have been trained to perform any skilled or unskilled work for hire or reward. Thus, by implication, an Apprentice has been excluded from the definition of employee. An Apprentice therefore, cannot be considered as an employee within the meaning of Section 3(13) of the Act.

8. The Act provides for mandatory representation of employee through a recognized Union. It is for such Union to elect five representatives, who would be treated as protected employee. To include an Apprentice as a protected employee, would defeat very purpose of the provision of protected employees under the Act. The presence of an Apprentice on the establishment is as a trainee and not as a workman is a regular or even on contract basis. Thus, he cannot be permitted to represent the employee on the establishment. The findings recorded by the Assistant Commissioner of Labour with regard to he being regular employee is undoubtedly erroneous and hence perverse.

9. It would also be relevant to consider the judgment of the Division Bench of this Court in case of *Sunflag Iron and Steel Company Ltd. Nagpur (supra)*. It deals with the issue as to whether an employee of a contractor also can be permitted to become a protected employee and it is held that even contract employee cannot be elected as protected employee. This judgment therefore, squarely applies to the facts of the present case as the employees who are contractors employee and being

employee under the definition of Section 3(13) are also held to be not eligible to be elected as protected employee, in such circumstances question of electing Apprentice as a representative of the employee and protected employee does not arise.

10. In view of above discussion the order impugned therefore, deserves to be set aside and accordingly set aside to the extent of declaration of Roshan Wasudeo Wagh as the protected employee and elected employee of the employees on the establishment of the petitioner.

11. Hence, petition stands partly allowed in the aforestated terms.

(R. M. JOSHI, J.)