

BEFORE SHRI C.S.DATIR, INDUSTRIAL TRIBUNAL AT SATARA.

Reference (IT) No.04 of 2016
CNR No. MHIC 110001262016

Godrej & Boyce Manufacturing
Co. Ltd.,
Interio Division, Gat No.1267,
Shriwal, Tal. Khandala
Tal. Khandala, Dist. Satara.

.. First Party

V/s

Shivkranti Kamgar Sanghatana,
101 Walwan, Lonawala,
Tal. Lonawala, Dist. Pune.

.. Second Party

ADVOCATES : Shri. V. R.Joshi , Advocate for the First Party.

Shri. D. P. Todkar, Advocate for the Second Party.

PART-I JUDGMENT ON PRELIMINARY ISSUE
(Delivered on 09.06.2021)

1) In this Reference, the first party i.e. Godrej & Boyce Manufacturing Company had filed an application vide Exh.C-3, requesting to frame preliminary issue, stating that, the employees mentioned in Annexure-A are not workman. They are in managerial cadre and therefore, this court has no jurisdiction to entertain the reference and thus preliminary issue to that effect be framed.

2) On the basis of his application, my learned predecessor had framed preliminary issue vide Exh.C-3 on 08-11-2017.

Contention of the first party.

3) It is the main contention of the first party that, the employees mentioned in Annexure-A are not employees. They are appointed in managerial cadre and therefore, they cannot be said as a 'workman' within the meaning of Section 2(s) of the I. D. Act. When they were appointed, all employees knew that, their conditions of salary structure are in the managerial cadre. They are designated as a Senior Technical Staff Associate/Assistant Officer/Associate Officer as the case may be.

All employees are enjoying their status, privileges and benefits in a managerial cadre. Even they were received benefits, salary and other allowances as a managerial cadre. As they are not workman, this court is lacking jurisdiction to entertain the reference. Therefore, my learned predecessor has framed issue to that effect. To support his contention, the first party has examined in all nine witnesses. They are :-

(1) Vaibhav Gondhalekar - Exh.C-10

(2) S. G. Kannan - Exh.C-48

(3) Manoj Singh - Exh.C-49

- (4) Sanjaykumar Bajbalkar - Exh.C-51
- (5) Sachin Jadhav - Exh.C-54
- (6) Mahesh Kulkarni - Exh.C-59
- (7) Soumya Ranjan Das - Exh.C-60
- (8) Hemant Raut - Exh.C-61
- (9) Sanghavinay Langde Exh.C-62

4) As against, the second party i.e. Shivkranti Kamgar Sanghatana has alleged that, the contention raised by the first party are totally false and concocted. The employees named in Annexure-A have never been employed in the managerial cadre. Though the employees have been designated as a Senior Technical Staff /Associate /Assistant Officer/ Associate Officer as the case may be, but they are performing manual, skilled, unskilled and operational nature. Mere designation of the concern employee would not be sufficient to conclude that, they are not workman. On the contrary, their nature of job is a manual, skilled and unskilled. They are employees within the meaning of Section 2(s) of the I. D. Act. Therefore, the present dispute is tenable before this court. This application is nothing but to harass the employees by hook or crook. Application is devoid of merit, hence it may be rejected. To support his contention, he examined Mr. Sachin Desai vide Exh.U-9.

5) Heard argument. Perused record.

6) Considering the rival contentions of the parties, my predecessor has framed following issue and I record its finding with reasons as follows.

ISSUE

FINDING

1)	Whether the staff members mentioned in Annexure-A are workman ?	<u>In the affirmative</u>
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:-REASONS:-

As to Point No. 1 :-

7) It is the main contention of the first party that, the members of second party are appointed as Senior Technical Staff Associate/Assistant Officer/Associate Officer as the case may be. They have to work in supervisory and managerial category. Their nature of job is supervisory and managerial. Therefore, they would not term as a “workman” as defined u/s 2(s) of the I. D. Act, 1947. As they are not a “workman”, this court has no jurisdiction to entertain the reference. On this sole ground, reference may be dismissed.

8) As against, learned Advocate of second party has urged that, though members of second party are appointed as Senior Technical Staff Associate, but their qualifications are 10th and 12th plus ITI Fitter. Their nature of job is manual, skilled and technical nature. They have to work to cut the wood board through machine, to make a optimizer, to change the tools, to check a job as per superior officer, to cut a material, to make a programme, to make edge bending, to drill etc.

In short, their nature of job is skilled, unskilled, manual and operational nature. Their nature of job was never as supervisory or managerial cadre. Thus, they are a "workman" u/s 2(s) of the I. D. Act. Therefore, this court has right to entertain the reference. This application is not tenable. It is filed in order to prolong the matter and to deprive the rights of the second party.

Considering the rival pleadings of the parties, I would like to scrutinize the evidence led by the respective parties.

9) The first party has examined total nine witnesses to support his contention. They are ... (1) Vaibhav Gondhalekar - Exh.C-10, (2) S. G. Kannan - Exh.C-48, (3) Manoj Singh - Exh.C-49, (4) Sanjaykumar

Bajbalkar - Exh.C-51, (5) Sachin Jadhav - Exh.C-54, (6) Mahesh Kulkarni - Exh.C-59, (7) Soumya Ranjan Das - Exh.C-60, (8) Hemant Raut - Exh.C-61, (9)Sanghavinay Langde Exh.C-62.

10) Though above witnesses have deposed in examination in chief that, members of the second party are working in managerial and supervisory cadre, but their cross-examination reveal that, they are working as a manual, skilled and unskilled.

Above witnesses have admitted in their cross-examination that,

"Their education qualification are 10th and 12th plus ITI Fitter. It is not mentioned in their appointment letter regarding the nature of duties. It is not the process that, if raw material is insert in one machine, the final product came out of the another. Commands are used to be given to the machine. Instrument like vernier caliper, micrometer, depth guage, majoring tape, hammer, etc. are to be used and employees used the same while discharging their duties. The worksheet has to be filled by the concern employee every day after his work is over.

Further, these witnesses have admitted that, it is not mentioned in the appointment letters that, the post of Senior Technical Staff Associate comes within the managerial cadre.

These witnesses have further admitted that, the company has categorized different Bands like K, A, O, P, T & E. The lowest band is "K".

I am of view that, admittedly, there are six Bands in the company and lowest Band is "K". It is also admitted fact that, the employees are working in "K" Band only. The employees who are doing the work in lowest Band, how they can categorize in managerial cadre. It is very shocking and not acceptable to our conscious. No prudent man will accept the same. The defence of the first party to that effect is not reliable.

Even these witnesses have further admitted that, employees have no right to issue notice, memo, charge-sheet, to recruit, to dismiss or to punish any employees.

11) Considering the above admission, I am of candid opinion that, the members of the second party do the work as a manual skilled and unskilled.

12) Not only this, the learned Advocate of second party filed following citations to support his contention.

1) Arkal Govind Raj Rao Vs. Ciba Geigy of India Ltd., Bombay, 1985 II LLJ 401 (S.C.).

2) LIC of India Vs. R. Suresh, 2008 LAB. I.C. 2088 (S.C.).

3) Anand Regional Co-op. Oil Seedsgrowers Union Ltd. Vs. Shaileshmukar Harshadbhai Shah, 2006 (111) FLR 581 (S.C.)

4) National Engineering Industries Ltd. Vs. Shri Shri Kishan Bhageria & Ors., 1988 AIR 329 (S.C.).

5) S.K. Verma Vs. Mahesh Chandra & anr., 1984 AIR 1462 (S.C.).

6) Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., 1984 AIR 914 (S.C.).

7) Carona Ltd., Mumbai Vs. Anand Manjunath Rao & anr., 2018 II CLR 552 (Bom.H.C.) (D.B.).

8) Chandrashekhar Chintaman Vaidya Vs. National Organic Chemical Industries Ltd., Akola, 2010 II CLR 121 (Bom. H.C.) (D.B.).

9) M/s V.L.T. Cargo Movers Pvt. Ltd. Vs. Shri Ajitkumar S. Puri & anr., 2009 (120) FLR 215 (Bom.H.C.) (D.B.).

10) Seth Jeejeebhoy Dadabhoy Charity Funds & 3 Ors. Vs. Farokh Noshir Dadachanji, 2005 III CLR 110 (Bom.H.C.) (D.B.).

11) M/s Bombay Intelligence Security (I) Ltd. Vs. Mr. Harinarayan Jeet Bahadur Singh & ors., 2014 (141) FLR 123 (Bom.H.C.).

12) S. B. Kulkarni Vs. Indian Red Cross Society, 1988 I LLJ 411 Bom (Bom.H.C.).

13) Jayhind Vithoba Mahadik Vs. The General Manager, Maharashtra Scooters Ltd., 2004 LAB. I. C. 2527 (Bom.H.C.).

14) Shri Sant Kejaji Maharaj Smruti & Shaikshanik Sanstha Vs. Rajendra Deoraoji Raut & ors., 2019 LAB.I.C. 2873 (Bom.H.C.).

- 15) ***The Bombay Dyeing & Manufacturing Co. Ltd. Vs. R. A. Bidoo & ors., 1989 II CLR 248 (Bom.H.C.) (D.B.).***
- 16) ***Inamdar A. D. Vs. Bajaj Tempo Ltd. & Ors., 2000 (86) FLR 345 (Bom.H.C.).***
- 17) ***Kulwant Singh Vs. Reliance Petrochemicals Ltd., 2000 II CLR 138 (Bom.H.C.).***
- 18) ***Cricket Club of India & anr. Vs. Baljit Shyam (Mrs.) & anr., 1998 I CLR 570 (Bom.H.C.).***
- 19) ***Gopal Krishnaji Ketkar Vs. Mahomad Haji Latif, 1968 AIR 1413 (S.C.).***
- 20) ***C.Gopainath Pillai Vs. Thermax Ltd. & ors., 2005 I CLR 345 (Bom.H.C.).***
- 21) ***Arvind Ramdas Valke, Nagpur Vs. Ispat Industries Ltd. & ors., 2008 III CLR 1003 (Bom.H.C.) (Nag. Bench).***
- 22) ***Netaji Krishnaji Pawar Vs. Managing Director, Ajinkyatara Sahakari Sakhar Karkhana Ltd., 2004 LAB I.C. 4011 (Bom.H.C.).***

Wherein the Hon'ble Supreme Court and Hon'ble High Courts have categorically observed that,

“While deciding the person is workman or not, dominant purpose of employment should be the determining factor. The work like managerial or supervisory has to be understood in proper connotation and their mere used are not detract from the truth to decide whether employee is workman or not. Court should find out primary and basic duty of the employee and undue importance need not be given for the designation. What is the primary duty of the employee is much importance.”

The word “supervision” contemplates direction and control. While determining the nature of work, the issuance of the matter should call for consideration. Whether person was performing supervisory or managerial work is a question of fact. One must look into the main work and that must be find out from the main duties. A supervisory was one who could bind the company to take some kind of decision on behalf of the company. One who is merely reporting as affairs of the company and making assessment for the purpose of reporting, is not a Supervisor.

In a broad sense, one having authority over others to superintend and direct the person. Who has no independent right and authority to take the decision and his decision did not bind the company, cannot be termed as a supervisor or managerial cadre.

The Hon’ble Courts have further observed that, whether an employee is a “workman” or not will have to be decided with reference to the principle nature of duties and functions he carries out. Mere the person styled as a Manager does not mean that, he is a Manager. Mere designation of an employee is not of much importance. The nature of duties is very important. The designation or the nomenclature will not determine the factor.”

13) The learned Advocate of first party has filed following citations to support his contentions....

- 1) Vandana Joshi D/o Mr. K.D.Joshi, Thane Vs. Standard Chartered Bank Ltd., 2010 III CLR 901 (Bom.H.C.).**
- 2) Northcote Nursing Home Pvt. Ltd., Bombay & anr. Vs. Zarine H. Rahina (Dr.) (Mrs.) & anr., 2001 II CLR 155 (Bom.H.C.).**
- 3) Mukesh Tripathi Vs. Sr. Divisional Manager LIC & Ors 2004 III CLR 534. (S.C.).**
- 4) Ramesh Ramrao Wase Vs. The Commissioner, Revenue Division Amravati, 1996 I LLJ Pg.55 (Bom.H.C.).**
- 5) Nagpur Municipal Corporation Vs. Nagpur Mahanagar Palika Samanvaya Chikitsak Sangh, 1995 I CLR Pg.136 (Bom.H.C.).**
- 6) Maharashtra Industrial Development Corporation & Ors. Vs. Baban Nathaji Sarode & anr., 2002 (4) L.L.N. 959 (Bom.H.C.).**
- 7) Swapan Das Gupta & Ors. Vs. The First Labour Court of West Bengal & Ors., 1976 LIC 202, (Calcutta H.C).**

Wherein the Hon'ble Supreme Court and Hon'ble High Courts have categorically observed that,

“The workmen therein was performing the duty in supervisory category. Some set of workers were working as a subordinate to him. Even, the employee therein had right to recommend or to grant leave etc. He was invested with the power of making work appraisal of the workman working under him for determining their suitability for promotion. He has also power to assign the work, to allocate the jobs to his subordinate. The employee therein was working in supervisory and managerial capacity, which was not controverted by and on behalf of the company.”

In short, the fact and circumstances of the present case are quite different. Therefore, ratio laid down in the above citations are not applicable by any stretch of imagination. The employees in our case are doing the work of manual, skilled and technical nature. I have already discussed their nature of job in the earlier paras. Therefore, it is not necessary to repeat the same.

Considering the ratio laid down in the above citations, I am of the candid opinion that, the nature of duties of the employees is manual, skilled and technical nature. Considering their nature of job, they are a "workman" under the definition of 2(s) of the I. D. Act. They cannot be termed as a managerial or supervisory category. As they are a "workman", this court has power to entertain the reference.

14) Considering the entire scenario, I am of candid opinion that, an application filed by first party alleging that, the members of second party are not the workman u/s 2(s) of the I. D. Act is devoid of merit and liable to be dismissed. Hence, an application Exh.C-3 stands dismissed. Thus, I answer Issue No.1 in the affirmative and proceed to pass following order.

: **ORDER** :

- 1) An application Exh.C-3 (preliminary issue) regarding jurisdiction stands dismissed.
- 2) The members of the second party are workman as defined u/s 2(s) of the I. D. Act.
- 3) Reference to proceed in accordance with law.

Satara
DATE : 09/06/2021

Sd/-
(C. S. Datir)
Presiding Officer
Industrial Tribunal, Satara