

SHRI. N.K. KARANDE, JUDGE, LABOUR COURT, MAHAD-RAIGAD

Complaint (ULP) No. 04/2012.

Ramesh Tukaram Pote,
At : Mandava, Po. : Dhokavade,
Tal : Alibaug, Dist. Raigad. .. Complainant.

Vs.

- 1) The Managing Director,
Maharashtra State Co-operative
Marketing Federation Ltd.,
Kanmoor House, Near Masjid Station, .. Respondents.
Mumbai - 400 009.
- 2) M/s. Maharashtra State Co-operative
Marketing Federation Ltd.,
District Marketing Office,
Ramnarayan Patrakar Bhavan,
Opp. Krida Bhavan,
At. Po. & Tal : Alibaug,
Dist. Raigad.

Appearances: Adv. Shri. Aadesh Bhosale for complainant.
Adv. Shri. Vijay Mehata for respondents.

FINDINGS ON PRELIMINARY ISSUE

(Date : 01-10-2014)

INTRODUCTION :-

1. Respondents have taken the objection to maintainability of the complaint by way of application on the ground that complainant is not workman.

ADMITTED FACTS :-

2. Complainant was initially appointed as a clerk. Thereafter he was promoted as a Sales Representative by order dated 28-10-1999. Again he was promoted as a Assistant District Marketing Officer by office order dated 20-11-1999 and he was posted at Raigad. By office order dated 25-07-2005 charge of District Officer Manager was kept with complainant. Departmental enquiry was conducted against complainant

and complainant was dismissed from service. Therefore complainant has filed present complaint in respect of unfair labour practices under Section 28 and Sch. IV Item 1(a), 1(b), 1(d), 1(f) & 1(g) of M.R.T.U. & P.U.L.P. Act.

OBJECTION OF RESPONDENTS :-

3. Respondents have taken the objection to maintainability of the present complaint on the following grounds:-

1) Complainant was initially appointed as a clerk thereafter he was promoted as a Sales Representative and Assistant District Marketing officer. At a time of dismissal he was in-charge District Marketing officer.

2) District marketing officer was having power to decision and nature of his duty was like supervisor.

3) Complainant was having control over staff namely one accountant, two peons and he was having right to sanction the leave of the staff.

4) Assistant District marketing officer and District marketing officer are having higher posts and therefore, complainant is not workman as defined Section 3(5) of M.R.T.U. & P.U.L.P. Act and Section 2(s) of I.D.Act.

5) So, complaint is not maintainable one.

COMPLAINANT'S SAY :-

4. Complainant has filed Say at Exh. U-8 and denied allegations of respondents. Complainant was not appointed as District Marketing Officer and no salary of District Marketing Officer was given to him. However, he was in-charge of District marketing officer. Complainant was appointed as a Assistant District marketing officer. No any supervisory duty was allotted to him. According to complainant he made only request to superior officer in respect of sanction leave of staff. Complainant was not authority to appoint salesman to purchase grains. Complainant is workman therefore, complainant has prayed for rejection of the application.

ISSUES AND FINDINGS :-

5. Preliminary issues are framed at Exh. O-3 and findings along with reasons thereon are as under -

PRELIMINARY ISSUES

FINDINGS

- | | | |
|--|----|---------------------|
| 1) Does complainant prove that he is workman of respondents? | .. | In the negative. |
| 2) What order? | .. | As per final order. |

REASONS

6. Heard both side. Perused the documents and pleadings of both parties very meticulously.

ISSUE NO. 1 :-

7. Respondents have denied that complainant is workman. Respondents have challenged the maintainability of the complaint on that ground. So, complainant is workman or not is vital question before Court. To solve said question at a glance see the legal provisions and case laws.

STATUTORY PROVISIONS :-

8. **Section 3(5)** of M.R.T.U. and P.U.L.P. Act, 1971 speaks that “employee” in relation to an industry to which the Bombay Act for th time being applies, means an employee as defined in clause (13) of section 3 of the Bombay Act; and in any other case, means a workman as defined in clause(s) of section 2 of the Central Act and a sales promotion employee as defined in clause (d) of section 2 of the Sales Promotion Employees (Conditions of Service) Act, 1976.

Section 2(s) of Industrial Disputes Act, 1948 speaks that -

“Workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or,
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

From the above definition it is clear that employee who is doing the duty of managerial, administrative and supervisory is not workman.

CASE LAWS :-

9. Respondents have relied on the following case laws :-

i) Vijay Dattatraya Kale Vs. Peico Electroncis and Electricals Ltd. and Anr., 2009 II Bom. L.C. Pg.90.

Legal prepositions :- "Supervision consist in overseen by one person over the work of other. This also involves a power in the person oversee to direct and control the work done by the person over whom is a supervising."

ii) Sadanand Ramesh Samsi Vs. Kiroloskar Cummins Ltd. and Others, 2003 I LLN 484.

Legal prepositions :- Person performing managery function of technical nature is not a workman.

iii) Ganpati Yesu Kadam Vs. Municipal Corporation Bank Ltd., 2012 III CLR Pg.No. 731.

Legal preposition :- A person employed primarily as a manager, administrative, supervisory and technical capacity can not to be said to be a workman.

10. Further following well settled legal principles in respect of workman definitions which are as follows.

(1) Term "Supervisor" means checking up and reporting work is not supervisory work without any power to take independent decision."

(2) Designation is not material but what is important is the nature of work.

(3) Find out the dominant purpose of employment and not any additional duties the employee may be performing.

(4) Can he bind the Company/employer to some kind of decisions on behalf of the Company/employer.

(5) Has the employee power to direct or oversee the work of his subordinates.

(6) Has the power to sanction leave or recommend it; and

(7) Has he the power to appoint, terminate or take disciplinary action against workmen.

Following tests are given by Hon'ble Superior Courts in various judgments to decide the issue of workman.

(a) Whether the employee can examine the quality of work and whether such work is performed in satisfactory manner or not;

(b) Does the employee have powers of assigning duties and distribution of work;

(c) Can he indent material and distribute the same amongst the workmen;

(d) Even though he has no authority to grant leave does he have power to recommend leave;

(e) Are there persons working under him;

(f) Has he the power to supervise the work of men and not merely machines;

(g) Does he mark the attendance of other employees;

(h) Does he write the confidential reports of his subordinates.

COMPLAINANT'S EVIDENCE :-

11. Considering the above legal aspect see complainant's evidence and pleading. Complainant has pleaded and lead evidence that he was appointed as a clerk on 19-01-1989 and thereafter he was promoted as sales representative on 28-10-1999. Thereafter he was promoted as Assistant District Marketing Officer. According to complainant auditor and Assistant District Marketing Officer and Sales Officer are come in the second class posts. According to complainant he was in-charge of District Marketing Officer. It was his duty to maintain registers and recover sales amounts from customers and give account to his superior officers. Complainant has submitted that he was not having any right to sanction leave. Complainant was not having right to purchase the paddy and gave

to the mill owner. Complainant duty was like clerical nature. Court finds from complainant's evidence that complainant sanction leaves of employees. Court finds during his cross-examination that complainant was appellate authority under Information Act. From the complainant's evidence it appears that complainant was exercising administrative as well as financial powers and he was doing job of manager.

RESPONDENTS' EVIDENCE :-

12. On the other hand respondents have examined witness Kishor Mokal who was accountant in the Marketing Federation. He also stated that complainant was District Marketing Officer and complainant was having power to take decision to purchase food grains and also allot grain to milling to millers. Complainant was having power to sanction the leave of staffs. He has stated that complainant was member of employees union and Labour Welfare Fund contribution Rs. 12 was cut from salary of complainant. Labour Welfare Fund contribution cut from the salary of workman is not criteria to give status to complainant as a workman. From the respondents' evidence it reveals that complainant was doing job of manager.

DUTIES OF COMPLAINANT :-

13. Considering oral evidence of both parties turn towards real duties of Assistant District Marketing Officer which are given in Marathi Language as under -

सहाय्यक जिल्हा मार्केटिंग अधिकारी यांच्या जबाबदा—या व अधिकार :

१) जिल्हा मार्केटिंग अधिकारी यांच्या अनुपस्थितीत जिल्हा मार्केटिंग अधिकारी कार्यालयाच्या कार्यभार सहाय्यक जि.मा. अधिकारी पाहतील.

२) दररोज जिल्हयांतील प्रमुख कृषि उत्पन्न बाजार समितीकडून अन्नधान्य व कडधान्याचे बाजारभाव यांचे संकलन करावयाची जबाबदारी सहा.जि.मा.अ. यांची राहिल.

३) जिल्हा मार्केटिंग अधिकारी यांच्या सल्लामसलतीने मासिक जिल्हा सल्लागार समितीची सभा बोलाविणे, सभेचा वृत्तांत लिहिणे, सभेत मंजूर झालेल्या ठरावाची माहिती प्रधान कार्यालयास कळविणे ही कामे सह.जि.मा. अधिकारी यांनी करावयाची आहेत.

४) जिल्हा कार्यालयाकडून विहित नमुन्यात प्रधान कार्यालयातील विभागांना माहिती पाठविण्याची जबाबदारी सहा.जि.मा.अ. यांची राहिल.

५) जिल्हा कार्यालयातील सेवकांकडून कामकाजात हयगय, गैरप्रकार होत असल्याचे

दिसून आल्यास ही बाब त्वरीत जि.मा.अ. यांच्या निदर्शनास आणून देण्याची जबाबदारी सहा.जि.मा.अ. यांची राहिल.

आर्थिक अधिकार :-

१) जिल्हा मार्केटिंग अधिकारी यांच्या अनुपस्थितीत सहाय्यक जि.मा.अधिकारी यांना खालील आर्थिक व प्रशासकीय अधिकार वापरता येतील.

२) कार्यालयाचे भाडे, वीज, पाणी बिल, पालिका कर, चहापान खर्च, पोस्टेज दुरुध्वनीचे बिल अदा करणे.

३) सबएजंट संस्थाना विहित केलेल्या दराने देय कमिशनची रक्कम अदा करणे.

४) संयुक्तकरित्या बँक खाते चालविणे, धनादेशावर सहया करणे.

५) कार्यालयातील सेवकांना फिरती/भत्ते बिलासाठी अग्रिम रु. ५०००/- पर्यंत मंजूर करणे, अदा करणे, फिरती बिले मंजूर करणे, अदा करणे.

६) कायदेशीर कारवाई करण्याच्या दृष्टीने नोटीस देण्यासाठी रु. १०००/- च्या कमाल मर्यादित अधिन राहून नोटीस खर्च मंजूर करणे.

प्रशासकीय अधिकार :-

द्वितीय श्रेणीपर्यंतच्या सेवकांच्या धनार्जित रजा वगळता सर्व प्रकारच्या रजा मंजूर करणे.

14. Duties of District Marketing Officer are as under -

जिल्हा मार्केटिंग अधिका-यांचे अधिकार व जबाबदा-या :-

सामान्य जबाबदा-या : (जिल्हा सल्लागार समितीचे अध्यक्ष यांचे पूर्वपरवानगीने सुचनेनुसार व सल्लामसलतीनेच खालील अधिकार राबवावयाचे आहे व जबाबदा-या स्विकारायच्या आहेत)

१) जिल्हा मार्केटिंग कार्यालयाच्या संपूर्ण कामकाजास/व्यवहारास जिल्हा मार्केटिंग अधिकार जबाबदार राहतील.

२) प्रधान कार्यालयाकडून प्राप्त झालेल्या सूचनेनुसार/आखून दिलेल्या ध्येयधोरणानुसार सर्व प्रकारची खरेदी विक्री करणे.

३) जिल्हा कार्यालयाचे वार्षिक अंदाजपत्रक तयार करून मंजूरी घेणे.

४) जिल्हा कार्यालयांतर्गत असणा-या गोदामांवर गोदामांतील मालाच्या साठवणुकीवर नियंत्रण ठेवणे.

५) प्रधान कार्यालयाच्या सुचनेनुसार आधारभूत धान्य खरेदी योजनेची अंमलबजावणी करणे.

६) जिल्हा कार्यालयातील/गोदामावरील सेवकांना कार्यतक्ता देवून कामे करून घेणे.

७) अन्नधान्य खरेदी-विक्री, खत आवक-जावक, खरेदी-विक्री वितरण इत्यादीसाठी आवश्यक ती सर्व प्रकारची साठा रजिस्टर नोंदी ठेवणे.

८) लेखापरिक्षणासंदर्भात दोष दुरुस्ती अहवाल विहित अशा ओ नमुन्यात निर्धारित वेळेत पूर्ण करून देणे.

९) प्रत्येक महिन्याच्या १० तारखेच्या आंत अर्धशासकीय पत्राद्वारे मा. व्यवस्थापकीय संचालकांना जिल्हयाच्या कामकाजाची माहिती पाठविणे.

१०) ठरवून दिलेल्या नियमानुसार जिल्हा सल्लागार समितीची सभा आयोजित करणे, सभेत मंजूर ठरावांनुसार अधिकार कक्षेच्या अधिन राहून ठरावांची अंमलबजावणी करणे.

११) शासकीय पत्रांना उत्तरे देणे, जिल्हाधिका-यांनी तसेच अन्य शासकीय अधिका-यांनी, खत कंपन्यांनी आयोजित केलेल्या सभांना उपस्थित राहणे.

१२) सर्व प्रकारच्या महत्वाच्या कागदपत्रांची, करार-मदारांची तसेच पत्रव्यवहाराची जपणूक करणे.

१३) आवश्यक ती सर्व प्रकारची हिशोबाची कामे वेळेवर पूर्ण करून वार्षिक नफा-तोटा पत्रके, ताळेबंद तयार करणे.

१४) सबएजंट संस्थांशी/खत कंपन्यांशी झालेल्या व्यवहाराची वेळोवेळी खातेजुळवणी करणे, वसुलीसाठी कायेदशिर नोटीस बजावणे, येणे रक्कमा व थकबाकीच्या रक्कमा वसुली कामकाजाचा पाठपुरावा करणे व त्यासंबंधीचा प्रगती अहवाल प्रधान कार्यालयास पाठविणे.

१५) बाजार उलाढालीचा व तेजीमंदीचा आढावा घेवून अन्नधान्य खरेदी विक्रीच्या संदर्भात तातडीची कार्यवाही करण्याच्या दृष्टीने पाठपुरावा करणे.

आर्थिक अधिकार -

१) कार्यालयाचे भाडे, वीज, पाणी बिल, पालिकाकर, चहापान खर्च, पोस्टेज, दुरध्वनीचे बिल अदा करणे.

२) सबएजंट संस्थांना विहित केलेल्या दराने देय कमिशनची रक्कम अदा करणे.

३) संयुक्तरित्या बँक खाते चालविणे, धनादेशावर सहया करणे.

४) कार्यालयातील सेवकांना/फिरती भत्ते बिलासाठी अग्रिम रु. ५०००/- पर्यंत मंजूर करणे, अदा करणे, फिरती बिले मंजूर करणे, अदा करणे.

५) बाजार उलाढाल, तेजीमंदीचा आढावा घेऊन रुपये ५ लाख मर्यादेपर्यंत अन्नधान्याची विक्री करणे व त्यास प्रधान कार्यालयाची कार्योत्तर मंजूरी घेणे.

६) कायदेशीर कारवाई करण्याच्या दृष्टीने नोटीस देण्यासाठी रु. १०००/- च्या कमाल मर्यादेस अधिन राहून नोटीस खर्च मंजूर करणे.

प्रशासकीय अधिकार -

१) द्वितीय श्रेणीपर्यंतच्या सेवकांच्या धनार्जित रजा वगळता सर्व प्रकारच्या रजा मंजूर करणे.

२) कार्यालयातील सर्व सेवकांना कार्यसूची देऊन कार्यालयीन कामकाज वेळेत पूर्ण करून घेणे व कामकाजात निष्काळजीपणा करणा-या सेवकांना कारणे दाखवा नोटीस देवून खुलासा विचारणे.

३) जिल्हा कार्यालयातील सेवकांस कामकाजाबाबत गोपनीय अभिलेख लिहीणे (दरवर्षी गोपनीय अभिलेख दि. ३० एप्रिलपर्यंत प्रशासन विभागास प्राप्त होतील याची दक्षता घेणे.)

15. After perusal documentary evidence at Exh. C-8 it appears that complainant sanctioned leave also he sanctioned Medical reimburse bills of staff. Court finds from the evidence on record that complainant had exercised financial as well as administrative powers. Court finds from the evidence that complainant was doing the manager's job in Marketing federation.

16. From the above evidence one fact is clear that as being Assistant Marketing Officer complainant was having administrative and financial powers. As being Assistant District Marketing Officer complainant was having responsibility to put up control on the staffs and if any illegality found then disclose it to his superior officer. Further complainant as being Assistant District Marketing Officer was having power to sanction leaves of staffs. Complainant was having financial powers to grant bills and pay bills. After perusal main duties of complainant as being Assistant District Marketing Manager, he is not workman, even though he was in-charge of District Marketing Manager at a time of enquiry. Consequently following conclusions.

CONCLUSIONS :-

17. Complainant is not workman but manager. Hence complaint is not maintainable. So answer of issue No. 1 is in negative.

18. In the result, this court pass following order.

ORDER

Complaint is dismissed with costs.

Place : Mahad.

(N. K. KARANDE)
Judge,

Date : 01-10-2014.

Labour Court, Mahad.