

-: ORDER BELOW EXH.C-3 :-

1. Amid trial, the first party herein fore-mostly raised objection upon limitation as well as status of second party being workman and moved this application for framing preliminary issue and having due deliberation over such objection. According to them second party is not a 'workman' as per the provisions of law so also he doesn't fall in the category of workman, therefore, he is dis-entitled from claiming any relief from the court. As second party was holding managerial post he is not qualified to present reference in such form. Even there is inordinate delay in approaching the authority. Thus, the reference is hit by law of limitation. On these counts, first party craves leave for framing preliminary issue as prayed.

2. Per contra, on other side, countering such objections the second party time and again claimed himself as a workman. He pleaded that there exists employer employee relationship *inter-se* them which confers him legal right to invoke provisions vide Industrial Disputes Act and raise his grievance before the appropriate authority. It is further expressed that there is no delay in preferring reference. The provisions of limitations are inapplicable to the reference. Finally, second party implored for rejection of the application and claimed expedite hearing of the reference.

3. In the light of rival submissions, I have ruminated over limitation and employment tie issue as well as definition of workman as expressed in the Act. As regards, limitation issue in concern, I believe the reference is preferred by Government and not on individual basis. There is no inordinate delay as such in the reference but still it being a mix question of fact and law, it can be answered at the time of adjudicating all issues together. Since they may be interlinked, can be touched with common evidence. Accordingly, in my opinion, there is no utter need to frame preliminary issue with regards to the limitation as it can be accommodated in other issues suitably.

4. Now adverting towards workman issue, it is settled position where an employee does work of more than one of the kinds mentioned in

the definition it will be necessary to determine under which classification he works for the purpose of finding out whether he does or does not go out of the definition of workman. If it is supervisory work it would be held that he is employed to do supervisory work even though he may not be doing technical, clerical or manual work. If on the other hand, the supervisory work is only incidental to the main or substantial work of any other type, the employment would not be in a supervisory capacity. The test to be applied to decide whether an employee is a workman is to take into account his basic or primary duties and the dominant purpose of his employment. The designation of an employee is not of much importance and what is important is nature of duties being performed by the employee. Indeed, in present *lis*, except pleading nothing is brought on record for and on behalf of respondent disclosing what kind of managerial work the second party was doing. There are no duties or responsibilities conferred upon the complainant akin to any managerial or supervisory post. The question, whether person is performing an administrative or managerial function is essentially a matter of evidence. In the circumstances, when burden is purely upon the first party, it was obligatory upon them to prove how second party is not a workman, with cogent evidence. In the circumstances, the only conclusion *prima facie* can be drawn that the issue being of mixed question of facts and law, deserves deep evidence which can be taken up cumulatively along with other issues which the court is supposed to frame. Like limitation, this issue can also be referred and answered. Apparently there is no need to frame preliminary issue in absence of any strong material and solely on the basis of evasive/restricted pleadings. Ultimately, in absence of strong substantial material, imploration for framing preliminary issue of workman made by the first party deserves to be thwarted at threshold. To *coup de grace*, I pass the following order;

: ORDER :

Application is rejected.

Date :- 16.02.2019

Kolhapur.

(Amit A. Laulkar)
Presiding Officer,
Labour Court No. II, Kolhapur.