



Presented on	22/11/2017
Registered on	22/11/2017
Decided on	10/10/2024
Duration	Y M D
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Exh.O: 2

BEFORE THE JUDGE, LABOUR COURT AURANGABAD
(Smt. M. R. Kolhar, Judge, Labour Court)

Comp. ULP No. 84/2017
(CNR: MHLC20001397-2016)

Vinod S/o Narayan Ingale,
Age : 38 years, Occ. Terminated,
R/o Dwarka Nagar, Bajaj Nagar,
Aurangabad

...Complainant

Versus

Varroc Polymers Pvt. Ltd.
Through : It's General Manager,
M-138/139, MIDC, Waluj,
Aurangabad

... Respondent

Advocate: Shri S. S. Vidwauns, for Complainant

Shri S. V. Dankh for Respondent

JUDGMENT (PART - I)
(Delivered on : 10.10.2024)

- 1) The complainant has filed this complaint as per section 28, 30 r/w item no. 1 (a), (b), (d),(f) and (g) of sch. IV of MRTU &PULP act for challenging termination order 04.09.2017 and terminating the services of complainant w.e.f. 04.09.2017.
- 2) The brief facts of complainant's case as under that The complainant submits that the respondent is engaged in the business of manufacturing of tool room activities and it has a huge customer base in the entire country. The respondent engages approx 55-60 workers in its factory and 75-100 staff employees as well. Thus, the provisions of Model Standing Orders (The Industrial Employment Act) 1946 are applicable to the respondent factory. The complainant was working as Permanent Employee of the respondent company at its factory situated at M-138/139, MIDC, Waluj, Aurangabad. The respondent company is a tool-room job work based manufacturing company. The complainant submits that the respondent is a private limited company, which is a part of Varroc group of companies having its more than 30 manufacturing units all over the world. It is noteworthy that the factory situated at above-mentioned address is the only factory involved in tool room activities. The factory manufactures its tools which are supplied to various Indian and Multi-national automobile manufacturing companies all over the world. The complainant is technically qualified personnel suited for manufacturing process of the respondent. Complainant is 12th class passed and having diploma in machine operator qualified employee. The complainant is having his expertise in creation of specific job-works as per the customer specific requirements. The respondent factory is involved in such job works. The complainant came to be appointed on probation basis on 2.4.2008 as "S-2" for a period of six

month on basic pay of Rs. 5,650/-. the complainant was a workman as per the definition of Workman under Section 2(s) of The Industrial Disputes Act, 1947 and an Employee as per the definition of Employee under Section 3(5) of the MRTU & PULP Act, 1971. The complainant submits that the respondent is an Industry as per Section 2(j) of the Industrial Disputes Act, 1947.

3) The complainant submits that though he was designated as “Supervisor” he was drawing meager wages and his nature of duties do not include any kind of administrative or supervision in work. The complainant does not have powers to issue show-cause notice, charge-sheet, memo, to grant leave, or to give orders to others or other supervisory or managerial powers. The complainant does not fall in the inclusive clause of the definition of the term “workman” under Section 2(s) of the Industrial Disputes Act, 1947 and therefore he is an employee under Section 3(5) of the MRTU & PULP Act, 1971. Hence, this Court has powers and jurisdictions to entertain and try the instant complaint. Therefore, it may please be held that the complainant is a workman.

4) The respondent filed written statement at **Exh. C-5** and contended that the complainant is not workman as defined in section 2(s) of Industrial Dispute Act and 3(5) of MRTU and PULP Act. The respondent is a company incorporated under the Companies Act, 1956 having its registered office at and one of its separate industrial establishment at Plot No. M-138, 139, MIDC Industrial Area, Waluj 431136 at Aurangabad. The respondent is engaged mainly in production of moulds at Aurangabad. The respondent employs 6 permanent workmen who are represented by Trade Union. The complainant was employed as permanent vide

appointment dtd. 2.4.2008. The respondent appointed complainant on supervisory / administrative post of Sr. Supervisor-TDC S2 Grade on probation and confirmed in the employment on supervisory post of Tool and Die Maker from 2.10.2008 in the Junior Management Cadre. The respondent states that at the time of termination, the complainant was drawing the monthly salary of Rs. 28,722/- (CTC Per Month). While in the employment of the respondent / company, the complainant was mainly discharging the duties of the administrative / supervisory nature in a given shift and section which include amongst others team based management of manufacturing activities of the production department on behalf of the respondent company. The complainant was authorized to impart the Mitsubishi – Execution work with Tool plan and responsible for quality of machining within the time frame of CAM and supervise the work of others. The complainant was directly reporting to the Assistant Manager-Toolroom. The complainant's basic purpose of employment was that of administrative and supervisory role in manufacturing activities. The complainant was having authority to attend General Meetings as a representative of his Section/Department. The complainant was having authority to report to the respondent the happenings at the shop floor to the extent of his shift. The respondent therefore states that the complainant is not workman under Section 2(s) of The Industrial Disputes Act, 1947 and as such is not employee under Section 3(5) of The MRTU & PULP Act, 1971.

5) My learned Predecessor has framed preliminary issue at **Exh. O-1** and given my findings thereon :

Sr. No.	ISSUES	FINDINGS
1	Whether the complainant proves that he is 'workman' as defined under Section 2(s) of the I. D. Act and consequently an 'employee' under Section 3(5) of the MRTU & PULP Act, 1971 ?	In the affirmative
2	What Order ?	As per final order.

REASONS

AS TO ISSUE NO.1 & 2:

6) The complainant has adduced his evidence in respect of preliminary issue at **Exh U-08** and closed his evidence by filing evidence close pursis Respondent examined witness, namely Bramhananda Mohan Birajdar at **Exh C-18**.

7) The complainant has deposed in his evidence in lieu of examination-in-chief that though he was designated as S-1 supervisor and confirmed as S- 2 supervisor but he is technically qualified person, he has completed I.T.I. in machinist after 12th . He was doing technical work. He was working operator on VMC machine. Therefore he falls in the inclusive clause of the definition of the term "workman" under Section 2(s) of the Industrial Disputes Act, 1947 and therefore he is an employee under Section 3(5) of the MRTU & PULP Act,1971.

8) In his cross examination the complainant deposed that he maintained log book while performing milling operation manually i.e. bottom milling, side milling, top milling and boar milling. He further deposed that once programme runs in VMC machine. He did not perform anything in manual. He gave command through

computerized system. He used to do bottom and top milling clamping arrangement. Before running computerized programme in VMC machine, block was loaded, top milling, bottom milling and clamping arrangement was done thereafter computerized programme runs. He deposed that he intend tools subject to approval of department head from store. He stated that he attended the meeting in respect of his job. He used to communicate with client of respondent and used to visit VMC. He used to explain the reasons for delay when mold would be manufactured with delay. He used to certify the process done on mold to supervisor. The complainant denied the suggestion put forth by Ld. Adv. for respondent that he was working in supervisory, managerial or in administrative capacity with respondent.

9) On the other hand respondent examined witness Bramhananda Mohan Birajdar who deposed that the complainant was drawing the monthly salary of Rs. 28,722/-. The complainant was mainly discharging the duties of the administrative / supervisory nature in a given shift and other team based management of manufacturing activities of production department on behalf of respondent company. The responsibilities of the complainant were to improve machining quality and insure hand work reduction, improvement in productivity, ensure on time completion of machining activity as per plan, conduct first time right job improvement properly, conduct TPM activities such as audit, arranging, indent from purchase, to impart training to apprentice / trainees / fellow employees and administer the work in section / department / work center, ensure manufacturing activity as per drawing or instructions, ensure 5s activity in work area, identify the

losses in his areas, day by day updation of jobcard, inspection of manufacturing part, study of drawing, to co-ordinate with other departments / sections / work centers for administering the production of activities to interact with the maintenance department and to ensure proper maintenance to supervise the helpers in department / section / work center, to represent the company at the time of customer inspection / audit to the extent of department / section / work center. Complainant was authorized to impart the Mitsubishi execution work with tool plan and responsible for quality of machining within the time frame of CAM and supervise the work of others. The complainant was authorized recording of manufacturing to the extent of his section and was authorized to issue indents for indenting the material from the stores by preparing the indents subject to approval of the operation head. The complainant was directly reporting to the Assistant Manager Tool Room. Complainant was authority to attend general meeting. He has authority to report to the respondent about the facts of shop floor to the extent of his shift.

10) In his cross the witness of respondent co. deposed that during the tenure of complainant he never worked with respondent and he is not acquainted with complainant. The witness admitted that the engineers and supervisors are used to actual work on machines as per work plan. The witness deposed that the manufacturing process of any mold involves machining preparation, cutting, clamping, drilling, tapping, loading the job on VMC machine, roughing, finishing, milling as per CM programme and final inspection. He further stated that drilling, milling, VMC milling, CNC lath, Fourth Axis, five axis and EDM etc. these machines are used for

manufacturing of mold. The witness admitted that the document vide Exh. C-14 i.e. shift schedule, actual work center denotes machine (CNC) Mitsubishi. The name of complainant is shown in column of operator's name in the said document. He admitted that machine set time, machine run time all these activities mentioned in the document which denotes activities completed by machine operator i.e. complainant on machine i.e. Mitsubishi. He also admitted that the operation on the said machine is till continue. He admitted that one operator is used to work on one machine in each shift. The witness do not know whether respondent has filed any document to show that operator working on Mitsubishi CNC machine was also working as a supervisor and thereby performing administrative work or not. He do not know whether respondent has filed any documentary evidence to show that the complainant was involved in any team based management of manufacturing activities of the production department. He stated that the responsibilities of the complainant in respect to improvement in machining quality ensure hand work reduction, improvement in productivity, ensure all time completion machining activities are in respect of Mitsubishi CNC machine. He also admitted that all machine operator are required to participate in TPM activities and various other audits. The complainant can send requisition for demanding material from store department. But, he has not filed any documentary evidence in this respect. He stated that complainant can not demand material from outside agency. He do not know whether respondent has filed any documentary evidence to show that the complainant was imparting training to the fellow employees, apprentice. There was no documentary evidence to

show that complainant was administered the department or section. He has not mentioned the name of employees or machines which complainant used to supervise. He has no documentary evidence to show that the complainant was recording manufacturing activities. He do not know whether complainant was working as a machine operator on Mitsubishi machine or not. He do not know the complainant was supervising the other work or not. He also not know whether he had any authority to participate any decision making process or not.

11) 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 expression used in this definition clause are all comprehensive. The word "any " means each and every or all. So construed the definition will take in its import all persons employed to do all sorts of skilled and unskilled work. Then comes sub-s. (a) and (b) which relate the persons who are employed by contractor or persons who are no longer in the employment. Thus having defined the term "employee" in a comprehensive sense, an exception is carved out, by using the expression "but does not include". If this clause was not in the definition, then even the persons who are sought to be excluded would have been included within the definition. Whenever such an expression is used it normally means that but for such exclusion the main part of the provision would have included what is sought to be excluded. It is needless to say that only that can be excluded which is included in the substantive part. Exception is intended to restrain the enacting clause by excluding particular cases. Thus the exclusion clause qualified the generality of the main clause; by

providing an exception and taking out as it were from the main enactment a portion, which but for specific exclusion would fall within the main provision.

12) It is apparent from the evidence that the complainant was employed as a skilled workman to supervise the working of the machines, the test of substantial work performed by employee concerned, is to be applied to find out whether the employee was employed to be skilled, un-skilled manual work, supervisory work, technical work or clerical work.

13) However, nowhere it is mentioned that, duty was casted on the shoulders of complainant to supervise the work of other employees. Therefore except bare words of witness there is no evidence on record to show that, complainant having administrative and supervisory capacity. For the sake of argument if it is presumed that, the complainant was supervising the work of production still it can not be said that, he was discharging managerial duty because admittedly the respondent has not assigned the power to the complainant to grant leave to other employees so also complainant was also not empower to issue show cause notice or to conduct enquiry against other employees. Even the complainant was not having authority to appoint the employees. This fact was specifically admitted by the witness of the respondent. If the definition of workman as defined section 2 (S) of Industrial Dispute Act is considered then it is clear that, the person who is doing any manual, un-skilled, skilled, technical, operational, clerical or supervisory work is workman. From the material brought on record by both sides it can be easily gathered that the complainant was discharging technical duty with the respondent. No doubt being production

supervisor it was necessary for the complainant to get the work of production done by other employee also. However, that act of complainant itself cannot be considered as managerial or of administrative capacity. In my opinion as the complainant was interested the job of production therefore for discharging said duty it was necessary for the complainant to supervise the work of other employee certainly if the definition is perused then it is clear that, the workman who are doing supervisory work are also included in the definition. Hence, I am not having any hesitation to hold that, the complainant was workman as defined in sec 2(s), of Industrial Dispute Act and employee as defined in sec 3(5) of MRTU and PULP Act.

14) I hold that the complainant is workman, therefore I answer issue no. 1 in the affirmative and in answer to issue No.2, I pass the following order:-

ORDER

1. It is hereby declare that the complainant is workman as defined in Sec. 2(s) of Industrial Dispute Act and he is employee as defined in Sec. 3(5) of MRTU and PULP Act.
2. The case is proceeded further. The complainant to lead evidence in respect of rest of the issues.

Sd/-

(Smt. M. R. Kolhar)
Judge,

Dated : 10/10/2024

Labour Court No. 1, Aurangabad

Argued on : 10/10/2024

Order dictated on : 10/10/2024

Order transcribed, checked and signed on : 16/10/2024

CERTIFICATE

I affirm that the contents of this PDF file Judgment/order are same, word to word, as per the original judgment/order.

Name of Stenographer : Mrs. G. G. Deshmukh-Dahibhate
Court : 1st Labour Court, Aurangabad