

(2009) 04 MAD CK 0002

In the Madras High Court

Case No : W.A. No. 1358 of 2006 and M.P. No. 1 of 2006

Ganesan M.

APPELLANT

Vs

Management of Tamil Nadu Electricity Board and Another

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (2009) 4 LLJ 245

Hon'ble Judges : M. Duraiswamy, J;K. Mohan Ram, J

Bench : Division Bench

Advocate : A.R. Gokulnath, for the Appellant; S. Ravindran and T.S. Gopalan and Co., for the Respondent

Final Decision : Allowed

Judgement

K. Mohan Ram, J.—The above writ appeal is directed against the order dated August 21, 2006 passed in W.P. No. 8471/1998 by Mr.

Justice N. Paul Vasanthakumar.

2. The appellant joined in the services of the first respondent in the year 1970. He was lastly working as an Assistant Engineer (Electrical), O & M

East, Sivagiri, Periyar Electricity System. His last drawn wages was Rs. 1,272/- per mensem. The appellant was removed from service by the final

order dated April 4, 1985 with retrospective effect from August 8, 1993 F.N. on certain allegations of misconduct. The appeal preferred by the

appellant against the final order was rejected by the Chairman of the first respondent by proceedings dated October 28, 1986 .

3. Being aggrieved by the order passed by the Chairman of the first respondent, the appellant raised a dispute before the concerned Conciliation

Officer. But the Conciliation proceedings failed which resulted in the dispute being

referred for adjudication to the second respondent. The industrial dispute was taken as I.D. No. 245/1988 by the second respondent. The first respondent filed a counter statement and one of the grounds taken in the counter statement was that the appellant will not fall under the definition of "workman" as contained in Section 2(s) of the Industrial Disputes Act (hereinafter referred to as "the Act") and as such the I.D. is not maintainable. Since the appellant had contended before the Labour Court that the domestic enquiry conducted against him by the management was not fair and proper and was one sided it became necessary for the Labour Court to decide whether the domestic enquiry conducted was fair and proper and that question was taken up as a preliminary issue. The appellant was examined as W.W. I and Exhibits W-1 to W-12 were marked on the side of the appellant and on the side of the first respondent-Management, Exhibits M-1 to M-11 were marked. At that stage the first respondent filed I.A. No. 508/1997 praying the second respondent to frame the following preliminary issue namely, "Whether the respondent M. Ganesan is a "workman" within the meaning of Section 2(s) of the I.D. Act.?" and decide it along with the issue "Whether the enquiry was fair?."

4. The appellant filed his counter affidavit contending that the first respondent herein was estopped from raising the said preliminary issue since it had all along admitted that the appellant herein was a "workman". After considering the rival contentions the second respondent held that the first respondent is estopped from raising the said preliminary issue and for arriving at such a conclusion the Labour Court referred to the Charge Memo and charge sheet issued by the respondent under the certified standing orders of the Board describing the petitioner as "workman" and also basing reliance on a decision of the Bombay High Court S.A. Sarang Vs. W.G. Forge and Allied Industries Ltd., Thane and Others, and ultimately dismissed I.A. No. 508/1997 as not maintainable by order dated November 26, 1997.

5. Aggrieved by the said order of the second respondent the first respondent filed W.P. No. 8491/1998 which was allowed by the learned single Judge by the order dated August 21, 2006 and against that order the appellant has filed the present writ appeal.

6. Learned Counsel for the appellant submitted that the learned Judge has proceeded on the wrong premise that the appellant had contended that the Management having appeared before the Conciliation Officer it should be taken that the management had accepted the appellant's status as workman" under the Act and therefore there is no necessity to try the issue whether the appellant is a workman" as a preliminary issue. He further submitted that the learned Judge has failed to see that the contention of the appellant was that in view of the Management having repeatedly asserted that the appellant was a workman and in view of the management having taken action against the appellant under the provisions of its certified standing orders for workmen other than those engaged in the clerical work the management was estopped from raising the above said issue before the second respondent herein. He further submitted that it was the management's case that the appellant was a workman to whom its certified standing orders were applicable and therefore it rightly proceeded by framing charges under its provisions; the learned Judge failed to see that even the departmental appellate authority asserted that the appellant was governed only by the Standing Orders for workman other than those engaged in clerical work and therefore the appellant was a workman; further before the Conciliation Officer the stand of the Management was that the appellant was a workman; in view of the aforesaid facts the management cannot now turn around and contend that the appellant was not a workman this was the stand taken by the appellant before the first respondent and the first respondent had referred to the aforesaid facts and has based reliance on the decision of the Bombay High Court S.A. Sarang v. W.G. Forge & A.I. Ltd. and Ors. (supra).

7. Learned Counsel for the appellant submitted that the decisions referred to and relied upon by the first respondent before the learned single Judge have no relevance to the facts of this case since the facts of those cases are totally different from the facts of the case on hand. He further submitted that the Apex Court has held in number of cases that the Courts should not place reliance on the decisions without discussing as to how the factual situation of the case fits it with the fact situation of the decision on which reliance is placed. According to the learned Counsel the learned Judge has not compared the facts of this case with the facts of the decisions on which reliance was placed by the first respondent.

8. Learned Counsel for the appellant submitted that in the affidavit filed in support of the writ petition the facts referred to by the second respondent for arriving at such a conclusion and the reliance placed on the decision of the Bombay High Court have not been denied or disputed; in the counter affidavit filed in the writ petition also these aspects have been high-lighted by the appellant but according to the learned Counsel unfortunately the learned Judge has not even considered the contentions raised by the appellant in the counter affidavit; similarly the learned Judge has not even referred to the decision of the Bombay High Court *S.A. Sarang v. W.G. Forge & A.I. Ltd. and Ors.* (supra). He submitted that the question of estoppel pleaded and raised by the appellant before the second respondent and which has been accepted by the second respondent has not at all been considered by the learned Judge.

9. Learned Counsel for the appellant drew our attention to the following portions of the answer statement filed by the first respondent in the

Conciliation Proceedings before the Conciliation Officer:

(v) As per the standing order for workmen engaged in categories other than those in clerical categories one who is unauthorisedly absent or (sic.

"for") more than 10 days is liable for disciplinary proceedings. As the petitioner's absence from board's service unauthorisedly exceeded 10 days

and he disobeyed the order of superiors, the Assistant Divisional Engineer called for explanation of the petitioner for his unauthorised absence and

disobedience of orders in his Memo No. ADE/O & M/Syd/J4/F 1/3/1339/83 dated September 2, 1983. In his letter dated September 9, 1983

given in person at Head-quarters mentioned in para 1. above, the petitioner suppressed all the above facts and misrepresented to higher

authorities.

...

(10) The following 7 charges were framed by the Divisional Engineer/South/Erode in the same dt. November 30, 1987 against the Assistant

Engineer, for his unauthorised absence and disobeyal orders (vide copy enclosed.).

Charge. I.

Thiru M. Ganesan, A.E/O & M/East/Sivagiri has failed to join the 20th batch of Training at Madras and thus disobeyed the orders of the

Superintending Engineer/Periyar Electricity System/Assistant Divisional Engineer,/ O & M/Sivagiri, Assistant Divisional Engineer, Memo. No.

ADE/O & M/SVG/JA/R.1161 dt. August 6, 1983.

This is a misconduct as per Standing Orders in respect of Workmen other than those engaged in Clerical Work. Standing Order. -No. 30(1).

Charge. II.

Thiru M. Ganesan, Assistant Engineer/O & M/Sivagiri is unauthorisedly absented from duty from August 8, 1983 F.N. Onwards.

This is a misconduct as per standing orders in respect of workmen other than those engaged in clerical work. Standing Order No. 30(XIII).

Charge No. III.

Thiru M. Ganesan, Assistant Engineer/O & M/Sivagiri East has disobeyed the orders of the Assistant Divisional Engineer/O & M/Sivagiri and

refused to rejoin in the old post vide. ADE/ O & M/Sivagiri Memo. No. ADC/O & M/JA/SVC/JA/F.1/1252/83 dt. June 22, 1983.

This is a misconduct as per standing orders in respect of workmen other than those engaged in clerical work. Standing Order No. 30(1).

...

20) ...Further at the time of D.P. he was a workman governed under standing orders for workmen and the charges were framed under Standing

Orders. The D. & A. Regulations cited by him is applicable to officers.

...

(24). ...The petitioner who was working as Assistant Engineer was borne on conferred class II category and governed under Standing Orders. The

Orders on the disciplinary proceedings on the petitioner by the Regional Chief Engineer/Coimbatore are in order.

10. In the counter statement filed in I.D. No. 245/1998 the first respondent in paragraph 13 has stated as under:

(13) The action of the petitioner was in violation of the relevant standing orders applicable to him. In the circumstances, the petitioner was issued

with a charge sheet dt. November 30, 1983 enumerating the following acts of misconduct:

(I) Thiru M. Ganesan, Assistant Engineer/O & M/East/Sivagiri has failed to join the 20th Batch of Training at Madras and thus disobeyed the

orders of the Superintending Engineer/Periyar Electricity System/ Assistant Divisional Engineer Memo. No. ADE/O & M/STC/ JA/ TR. 1161/83

dt. August 6, 1983.

(II) This is a misconduct as per standing orders in respect of workman other than those engaged in clerical work., Standing Order No. 30(i).

(III) This is a misconduct as per standing orders in respect of workman other than those engaged in Electrical Work, Standing Order No. 30(vii).

provides that absence without leave for more than 10 consecutive days without sufficient cause constitute a misconduct.

(IV) Thiru M. Ganesan, Assistant Engineer/ O & M/Electrical/Sivagiri East has disobeyed the orders of the Assistant Divisional Engineer/O &

M/Sivagiri and refused to rejoin in the old post vide ADE/ O & M/Sivagiri Memo. No. ADE/ DEMSEO/JA/F1/R.1252/83 dt. August 22, 1983.

This is a misconduct as per standing orders in respect of workman other than those engaged in clerical work, standing order. No. 30 (i).

In paragraph 26 of the same counter affidavit it is stated as under:

(26) ...The petitioner who was working as Assistant Engineer, was borne on conferred class I. category and governed by the relevant standing orders.

11. Learned Counsel for the appellant submitted that the second respondent-Labour Court by properly considering the aforesaid facts and

admissions and by applying the correct legal principles has rightly dismissed LA. No. 508/1997 and all the aforesaid facts and admissions made by

the first respondent have not at all been considered by the learned Judge. He submitted that in view of the clear, unambiguous and consistent

admissions made by the first respondent herein that the appellant was a "workman" the first respondent is estopped from raising the issue namely

whether the respondent named Ganesan is a "workman" within the meaning of Section 2(s) of the I.D. Act?

12. Learned Counsel for the appellant drew our attention to the following paragraph contained in the order passed by the Chairman of the first

respondent dated October 28, 1996 dismissing the appellant's appeal:

4. Further his contention that he cannot be dealt with under the Standing Orders is not correct. According to the Board's Memo No.

136345/736/II10/78-6, dated October 10, 1980 , the Assistant Engineers of the

Board are governed by Standing Order for workmen other than those engaged in Clerical work of Tamil Nadu Electricity Board and the amendment to service Regulation No. 93 issued in B.P. Ms. (FB) No. 40

has come into effect only from May 18, 1985, therefore the orders issued by Regional Chief Engineer in Memo dated April 4, 1985 is in order.

Learned counsel submitted that when the appellant himself contended before the Chairman of the first respondent that he could not have been

proceeded under the certified standing orders of the Board that contention was rejected holding that the petitioner is a workman. In support of his

aforesaid contentions the learned Counsel relied on the decision of the Bombay High Court S.A. Sarang v. W.G. Forge & A.I. Ltd. and Ors.

(supra). In the said decision, His Lordship Mr. Justice B.N. Srikrishna as his Lordship then was in paragraph 6 of the decision has laid down as

under:

6. Uniformly, in each Show Cause Notice and charge-sheet, it has been alleged that the act imputed to the petitioner was a misconduct under the

Model Standing Orders. It is not possible to ignore the cumulative effect of this conduct on the part of the first respondent Employer. To what

extent, the contention of Dr. Kulkarni needs to be accepted. If an employer continuously and consistently proposes and takes action against its

employee on the footing that he is covered by the Model Standing Orders (thereby implying that the employee is a ""workman"" within the meaning

of the Act), then such employer must be estopped from denying the said fact when a dispute regarding to the dismissal of the employee finally lands

up before an industrial adjudicator. It is unfortunate that the third respondent-Official Liquidator has not chosen to appear before the Court and

assist the Court. However, the Show Cause Notices and Charge sheet pointed out to me cannot be ignored and due weightage will have to be

given to them. Considering the cumulative effect of these documents, I am of the view that the petitioner was a ""workman"" within the meaning of

Section 2(s) of the Act and, therefore, the impugned order needs to be interfered with.

13. In N.E. Works v. G. Naicker (1970) LAB. I.C. 334 (DB), the facts, in nutshell are that the dispute between the Management and a workman

was referred for conciliation to the Conciliation Officer; the conciliation

proceedings commenced before the conciliation officer; the management was represented by its Works Manager; an agreement was signed by the workman and the Works Manager; since the agreement was not implemented by the Management, the workman sought to implement the agreement two years later; the Management contended that the settlement signed by the Works Manager was not binding on the management as he was not authorised to do so; while considering the said contention in paragraph 6 of the decision it has been laid down as under:

6. In our view, the entire matter turns upon a far simpler issue. Whether the Works Manager did or did not have the authority to proceed so far as to sign the agreement, is not the point which is really relevant. The point is that the firm permitted the Works Manager to appear on its behalf, and to take part in the conciliation proceedings. He held out that he was entitled to represent the firm for all purposes, and he signed the agreement as representing the firm. The opposite party (the workman) might well have consented to the agreement altering his position in respect of defences or contentions open to him, because he was labouring under the belief that the Works Manager represented the firm for all purposes. The firm cannot now be permitted to resile from the representation, after the opposite party had altered its position, and attempt to go behind the agreement therefore, this is a clear case of Estoppel, and it amounts also to Estoppel because of conduct altering the situation, and rights of parties.

14. In the decision *The Indian Link Chain Manufacturers Ltd. Vs. Their Workmen*, it is held as under at p.588 of LLJ

15. The stand taken by the company that there is no settlement in force covering the demands raised by the workmen is clear. In the statement of

claim the General Secretary of Sarva Shramik Sangh representing the workmen said that the private agreement between the company and Mumbai

Kamgar Union dated April 5, 1963 was duly terminated and thereafter a charter of demands was presented on February 4, 1965. Thereafter the

Assistant Labour Commissioner tried to conciliate and in his report Exhibit U-6 while stating that conciliation proceedings have ended in a failure,

relying upon the letter of the management, stated that there was no subsisting settlement/agreement or award presently in this dispute. The

admission by the management is said to be made under a mistake. We do not

think this is a satisfactory explanation of a categorical statement. In our view the letter of March 20, 1965 must at any rate be deemed to be a notice of termination, because there is a categorical statement that the settlement has been terminated on December 31, 1964. Even if there is no evidence of written notice terminating it on the date specified, the letter which said that it had so terminated must be taken as the requisite notice and, if so, the reference to adjudication under the Act has been made long after the expiry of the two months, i.e., on December 27, 1965. If we view the matter slightly differently, the result is the same, because when both the parties to the dispute proceeded on the specific plea that there was no settlement binding on either of them in respect of the wages and dearness allowance, even prior to conciliation, the Government had no option, on a failure of the conciliation proceedings and on being informed by the written representation of the appellant that there was no settlement in force, to refer the dispute to the Tribunal. The management, therefore, is estopped from now taking the stand that the settlement was not put an end to or that the reference was invalid.

15. Learned Counsel also based reliance on a decision of the Apex Court *Ashwani Kumar Singh Vs. U.P. Public Service Commission and*

Others, . In this decision the Apex Court in paragraphs 11, 13 and 14 has laid down as under:

11. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions, but the discussion is meant to explain and not to define.

Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

13. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

14. The following words of Lord Denning in the matter of applying precedents

have become locus classicus:

Each case depends on its own facts and a close similarity between one case and Anr. is not enough because even a single significant detail may

alter the entire aspect in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one

case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all

decisive.

XXX XXX XXX XXX XXX

Precedent would be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches, else you

will find yourself lost in thickets and bunches. My plea is to keep the path to justice clear of obstructions which could impede it.

16. Countering the said submissions the learned Counsel for the first respondent contended that simply because the charge memo and charge

sheets have been issued and the certified standing orders in respect of the "workman" other than those engaged in clerical work and the first

respondent had not contended before the Conciliation Officer that the appellant is not a workman it will not estop or prevent the first respondent

from raising such a question before the Labour Court, the second respondent herein. He submitted that in the counter statement filed in the I.D.

itself the first respondent has contended that since the appellant is not a workman the above I.D. is not maintainable. He submitted that the dispute

referred for adjudication before the second respondent relates to the non-employment of the appellant and hence one of the issues which arises for

consideration before the second respondent is whether the appellant is a "workman" within the meaning of Section 2(s) of the Act. He submitted

that if it is ultimately held by the Labour Court that the appellant is not a workman within the meaning of Section 2(s) of the Act none of the other

issues on merits will arise for consideration. He submitted that in the light of the nature of the dispute raised before the second respondent it is open

to the parties to contend that the appellant is not entitled to the benefits of the Act and wherever such a preliminary issue is raised it is for the

workman to establish that he is a workman. He, in support of his said contention based reliance on a decision of the Apex Court Hussan Mithu

Mhasvadkar Vs. Bombay Iron and Steel Labour Board and Another, . In the said decision in paragraph 5 the Apex Court has observed as under

at p. 1522 of LLJ:

5. On a careful consideration of the respective submissions of the learned Counsel on either side, we are of the view that in a case of the nature

where the Labour Court as well as the High Court entertained doubts about the status of the appellant as a workman within the meaning of Section

2(s) of the Industrial Disputes Act, instead of embarking upon an adjudication in the first instance as to whether the respondent-Board is an

industry or not so as to attract the provisions of the Industrial Disputes Act, ought to have refrained from doing so and taken up the question about

the status of the appellant for adjudication at the threshold and if only the finding recorded was against the appellant refrained from adjudicating on

the larger issue affecting the various kinds of other employees, as to the character of the Board, as an industry or not. The larger issue should have

been entertained for consideration only in a case where it is absolutely necessary and not when the claim before it could have been disposed of

otherwise without going into the nature and character of the undertaking itself....

In view of this position in law, it becomes all the more necessary to first undertake an adjudication of the question as to status of the appellant.

17. Learned Counsel for the first respondent basing reliance on the said decision submitted that since the first respondent is questioning the status

of the appellant as a workman within the meaning of Section 2(s) of the Act, the Labour Court ought to have decided that issue as a preliminary

issue and allowed I.A. No. 508/1997. He submitted that the learned single Judge by applying the correct principles of law has rightly set-aside the

order of the Labour Court and the order of the learned Judge is not liable to be interfered with.

18. We have carefully considered the respective submissions made by the learned Counsel on either side and the decisions referred to and relied

upon by them.

19. The learned single Judge in his order has observed that the finding given by the Labour Court based on presumption is unsustainable and the

same is to be treated as perverse finding but we are unable to agree with the aforesaid observations made by the learned single Judge for the

following reasons. In paragraph 7 of the order the Labour Court has pointed out that in Exhibit R-5 charge memo issued to the appellant by the first respondent three misconducts were alleged against him and those misconducts were defined by Clause 30 of the Standing Orders in respect of "workman" other than those engaged in clerical work. The Labour Court has also pointed out that in respect of those misconducts domestic enquiry was conducted and on the basis of the report of the Enquiry Officer namely Exhibit R-10 the appellant was dismissed from service. In the order of dismissal it is stated that the appellant has been dismissed from service for three proved charges as per Clause 30 of the Standing Orders which was applicable in respect of workman other than those engaged in clerical work. The Labour Court has further pointed out that even before the Conciliation Officer the appellant management has not contested that the petitioner was not a workman. These were the contentions put forth by the appellant before the Labour Court and the same on a careful consideration were accepted by the Labour Court. By basing reliance on the judgment of the Bombay High Court S.A. Sarang v. W.G. Forge & A.I. Ltd. and Ors. (supra) the Labour Court has also observed that the appellant, as per the certified standing orders applicable in respect of workman other than those engaged in the clerical work, was charge sheeted by the first respondent and at the conclusion of the disciplinary action he was dismissed from service only by treating him as a workman. According to the Labour Court in such circumstances it is not open to the first respondent to contend that the appellant is not a workman as defined in Section 2(s) of the I.D. Act. But the aforesaid reasons recorded by the Labour Court have been omitted to be considered by the learned Judge. Hence we are unable to agree with the aforesaid observations made by the learned Judge.

20. As rightly contended by the learned Counsel for the appellant the issue of estoppel pleaded by the appellant and accepted by the Labour Court has not at all been either referred to or considered by the learned single Judge. Similarly the decision of the Bombay High Court S.A. Sarang v. W.G. Forge & A.I. Ltd. and Ors. (supra) has also not been referred to or considered by the learned Judge. Whereas the learned Judge has referred to and relied upon the following decisions cited by the first respondent Management namely (i) The Newspapers Ltd. Vs. The State

Industrial Tribunal, U.P., , (ii) Mukesh K. Tripathi Vs. Sr. Divisional Manager, L.I.C. and Others, and (iii) Gujarat Water Resources Development

Corporation Ltd. Vs. Pravin Kumar and N. Makwana and another, .

21. In all the aforesaid three decisions the facts are totally different from the facts of the case on hand. We are of the view that the facts of those

cases are not similar to the facts of the case on hand and as such the ratio of those decisions cannot be applied to the facts of this case. The

learned Judge has also not stated that the facts of those cases are similar to the facts of the case on hand and in fact there is no discussion on that

aspect. As laid down by the Apex Court in the decision Ashwani Kumar Singh v. U.P. Public Service Commission (supra) Courts should not

place reliance on decisions without discussing as to how the factual situation of the case fits in with the fact situation of the decision on which

reliance is placed. In the very same decision it has been further observed that the circumstantial flexibility, one additional or different fact may make

a world of difference between conclusions in two cases. With respect to the learned Judge, we would like to point out that in the case on hand all

through the proceedings the first respondent had been treating the appellant as a workman and that was the reason why the proceedings were

initiated against him under the certified standing orders of the first respondent in respect of workman other than those engaged in clerical work.

Infact punishment also has been imposed only under the said standing orders and before the Conciliation Officer also it was not contended by the

first respondent that the appellant is not a workman. These facts make a lot of difference between the case on hand and the cases relied upon by

the first respondent before the Labour: Court. Whereas the facts of the present case and the facts of the case relating to S.A. Sarang v. W.G.

Forge & A.I. Ltd. and Ors. (supra) are similar and the same has been considered by the Labour Court also but unfortunately the learned Judge

has failed to consider the same.

22. Similarly the legal principles laid down in N.E. Works v. G. Naicker (supra) and Indian Link Chain Manufacturers Ltd. v. Workmen (supra)

are squarely applicable to the facts of this case. Apart from that in yet another decision Shaw Wallace and Co. Ltd. v. P.O., Second Addl. L.C.

(2002) 1 LLN 317 (Mr. Justice D. Murugesan in a similar factual background has

held as under:

6. In order to find out as to whether the second respondent is a workman or not, it must be seen that the writ-petitioner management itself while

issuing chargesheets, dated August 9, 1980 and December 27, 1980, has treated the second respondent as a workman as found from the contents

of the charges. In the chargesheet dated December 27, 1980, it is stated as follows:

You were on duty on the "B" shift on December 26, 1980.

It is alleged that at about 4.30 P.M. on December 26, 1980, you abused a co-employee C. Palayam using vulgar words and threatened him of his

life. It is also alleged that you were in a drunken state when you were on duty, and created disturbance inside the factory. It is further alleged that

you were found missing from the factory from 7.30 P.M. till the end of the shift.

The above allegations, if proved will amount to misconduct within the meaning of Clauses 14(ii), 8, 16, 21 and 28 of the Standing Orders of the

company and you are requested to submit your explanation in writing within 3 days of receipt of this letter why disciplinary action should not be

taken against you.

A reading of the above chargesheet indicates that the second respondent was treated as a workman and was called for explanation as to the

charges of misconduct within the meaning of Clauses 14(ii), 8, 16, 21 and 28 of the Standing Orders which are applicable to the workmen. Having

treated the second respondent as a workman, whether it would be permissible and would be open to the writ-petitioner to take a different stand

before the Labour Court contending that the second respondent is not a workman. In my view, such a stand taken by the writ-petitioner-

management cannot be permitted as the writ-petitioner-management are estopped from taking such a stand when the second respondent himself

was treated as a workman by the writ-petitioner-management while issuing the chargesheet for the alleged misconduct and for violation of some of

the provisions of the Standing Orders applicable to the workmen. Whether an individual is a workman or not is to be decided on the facts and

circumstances of each case. When the management treated the second respondent as a workman for the purpose of issuing chargesheet and

conduct of enquiry, allowing the same management to take a different stand

before the Labour Court would be otherwise encouraging the management to shift its stand according to the needs and choice and hence the same cannot be permitted.

23. We are in full agreement with the aforesaid decision of Mr. Justice D. Murugesan. Having treated the appellant as a workman, whether it would be permissible and would be open to the first respondent to take a different stand before the Labour Court contending that the appellant is not a workman, in our considered view, such a stand taken by the first respondent Management cannot be permitted as the first respondent Management is estopped from taking such a stand when the first respondent itself treated the appellant as a workman while issuing the charge sheet for the alleged misconduct and for violation of some of the provisions of the Standing Orders applicable to the workman. As pointed out by Mr. Justice D. Murugesan, whether an individual is a workman or not is to be decided on the facts and circumstances of each case. When the management treated the appellant as a workman for the purpose of issuing charge-sheet and conduct of enquiry, allowing the same management to take a different stand before the Labour Court would be otherwise encouraging the management to shift its stand according to the needs and choice and hence the same cannot be permitted. We are in full agreement with the aforesaid view of Mr. Justice D. Murugesan.

24. As far as the contention of the first-respondent based on the decision of the Apex Court *H.M. Mhasvadkar v. Bombay Iron & Steel Labour Board* (supra) is concerned it has to be pointed out that the said decision has no applicability to the facts of this case since the facts of that case are totally different. In that case since the Labour Court as well as the High Court entertained doubts about the status of the appellant as a workman within the meaning of Section 2(s) of the Industrial Disputes Act, the Apex Court pointed out that instead of embarking upon an adjudication in the first instance as to whether the respondent-Board is an industry or not so as to attract the provisions of the Industrial Disputes Act, they ought to have refrained from doing so and taken up the question about the status of the appellant for adjudication at the threshold. But in the case on hand the Labour Court has not entertained any doubt about the status of the workman, the appellant herein, in view of the categorical admissions made

by the first respondent Management. It has to be pointed out that the first respondent Management had all through treated the appellant herein as a workman and proceeded against him as such under the certified Standing Orders in respect of the workman other than those engaged in the clerical work and therefore in our considered view the question of trying the status of the appellant namely as to whether he is a workman or not as a preliminary issue does not arise. For the said reason the decision of the Apex Court *H.M. Mhasvadkar v. Bombay Iron & Steel Labour Board* (supra) has no applicability to the facts of this case.

25. For the aforesaid reasons the above writ appeal is allowed and the order of the learned single Judge dated August 21, 2006 passed in W.P.

No. 8471/1998 is hereby set aside. Consequently the connected MP is closed. The second respondent-Labour Court is hereby directed to

dispose of I.D. No. 245/1998 within a period of two (2) months from the date of receipt of a copy of this judgment.