

(2024) 03 BOM CK 0065

In the Bombay High Court

Case No : Writ Petition No.6446 Of 2021

Godrej And Boyce Manufacturing

APPELLANT

Vs

Shivkranti Kamgar Sanghatana

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 2(s)

Citation : (2024) 03 BOM CK 0065

Hon'ble Judges : Amit Borkar, J

Bench : Single Bench

Advocate : J. P Cama, Varun Joshi, Chetan Arvind Alai, Nitin Kulkarni

Final Decision : Dismissed

Judgement

Amit Borkar, J

1. In this writ petition filed under articles 226 and 227 of the constitution of India, the petitioner takes exception to the order passed by the Industrial Tribunal, Satara, in Reference I.T. No.4 of 2016, whereby the said Tribunal held that 20 persons enlisted in the Annexure to the Statement of Claim 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act 1947(hereinafter referred to as 'the I.D, Act').

2. The facts giving rise to the present writ petition, in short, are as under:

3. The petitioner is an engineering company engaged, inter alia, in manufacturing refrigerators, compressors, washing machines, office and home furniture equipment, locks, precision equipment, security equipment, material handling equipment, etc. The petitioner has one of its manufacturing plants, known as "Interio Division", manufacturing furniture items at Shirwal, District Satara.

4. The respondent is a union registered under the Trade Unions Act of 1926

representing workmen of the company established in Satara.

5. In 2015, the respondent raised a Charter of Demands seeking an increase in wages, benefits and emoluments for the workmen concerned. Since the conciliation proceedings failed, the dispute was referred to the Industrial Tribunal for adjudication. The union raised the dispute on behalf of about 44 employees whose names were stated in Annexure-A to the Statement of Claim.

6. The petitioner applied framing of a preliminary issue as, according to the petitioner, persons named in the Annexure to the statement of claim do not fall within the meaning of Section 2(s) of the I.D. Act. By an order dated 8th November 2017, the Industrial Tribunal framed a preliminary issue as to whether the employees mentioned in Annexure-A to the statement of claim are workmen.

7. The respondent examined Mr. Sachin Desai as its only witness by filing his affidavit in lieu of examination-in-chief whom the petitioner cross-examined. Petitioner examined eight witnesses in support of his plea that persons mentioned in the Annexure are not workmen. The respondent cross-examined the witnesses. The Industrial Tribunal Satara, by order dated 9th June 2021, held that 20 persons enlisted in the Annexure to the statement of claim are workmen within the meaning of Section 2(s) of the I.D. Act. The petitioner has, therefore, filed a present writ petition challenging the said order.

8. Mr. Cama learned senior advocate appearing for the company establishment, has urged the following submissions in support of the challenge to the order of the Industrial Tribunal:

i. The duties assigned to the workers were managerial, administrative, or supervisory. The dominant nature of their work was managerial or administrative.

ii. The Industrial Tribunal wrongly concluded that the respondent employees are technically qualified (ITI persons). Hence, they cannot be termed as persons performing supervisory or managerial functions.

iii. In the letters of appointment, letters of confirmation, and during the annual performance appraisal process, they were engaged to perform managerial and supervisory functions. Assuming respondent employees fall within the lowest rank system, they still were in the management cadre of the petitioner company by nature of their duties.

iv. The initial burden of proving that employees are workmen within the meaning of Section 2(s) of the I.D. Act is on the employees that they failed to discharge as only one person who later withdrew from the proceeding deposed on behalf of all the employees.

v. Various material documents produced on record by the petitioner relating to the recruitment process, duty list, performance appraisal, progressive reviews, management cadre emoluments, management remuneration package, performance paid, and economic value add, i.e., based on the profit-showing

formula, were not properly considered by the Industrial Tribunal.

vi. The evidence laid by the petitioner in respect of the nature of duties carried out by respondent employees, which clearly established that duties performed by them do not fall within the inclusive portion of the definition of the word "workman", remained unchallenged as they were cross-examined on behalf of the respondent union. According to him, the order passed by the Industrial Tribunal does not conform with the Apex Court's judgment in the case of *Burmah Shell Oil Storage and Distribution Company of India Limited Vs. Burmah Shell Management Staff Association and Ors.* reported in AIR 1971 SCC 922, this court in case of *The National Textile Corporation (Maharashtra North), Ltd., and Ors. Vs. S. M. Tambe and Anr.* 2000 (3) L.L.N. 913 and *C. Gupta Vs. GlaxoSmithKline Pharmaceutical Ltd. & Anr.* 2004 Volume II CLR 23 and, therefore, the order deserves to be set aside, and the matter needs to be sent back to the Industrial Tribunal for fresh consideration of the question of whether the concerned employees were working within the meaning of Section 2(s) of the I.D. Act or not.

9. On the other hand, Mr. Nitin Kulkarni, learned counsel appearing of the union, would urge that:

i. The Industrial Tribunal applied the correct test and rightly held that the concerned employees were workmen under Section 2(s) of the I.D. Act.

ii. Witness Sachin Jadhav gave details of the nature of work performed by each employee. In the cross-examination, petitioners' witnesses admitted that K-Band, where the respondents were carrying out their work, is the lowest Band. Supervisors belonged to A-Band, Managers to P-Band, Engineers to O-Band, the Assistant General Manager to T-Band, and the General Manager to E-Band. The respondent workers belonged to K-Band and held ITI qualifications acquired after passing the 10th standard examination.

iii. From the available evidence, it is more than clear that employees were discharging the duties of workers as specified in the Statement of Claim and, therefore, findings recorded by the Industrial Tribunal do not require any interference in extraordinary jurisdiction under Article 226 and 227 of the Constitution of India.

10. Before August 29, 1956, the Industrial Disputes Act's definition of "workman" only included skilled and unskilled manual or clerical workers, excluding those in supervisory, technical roles. However, amendments in 1956 and 1982 expanded the definition to include these categories. The Supreme Court judgments in *May and Baker (India) Ltd. v. Workmen* [AIR 1967 SC 678], *Western India Match Co. Ltd. v. Workmen* [AIR 1964 SC 472], and *Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burma Shell Management Staff Assn.* [(1970) 3 SCC 378] interpreted the definition in earlier years, focusing on whether the work done by individuals fell within the categories of manual, clerical, supervisory, or technical. These judgments determined the eligibility of individuals as workmen based on the nature of their tasks. Subsequent

judgments in *S.K. Verma v. Mahesh Chandra* [(1983) 4 SCC 214] *Ved Prakash Gupta v. Delton Cable India (P) Ltd.* [(1984) 2 SCC 569] and *Arkal Govind Raj Rao v. Ciba Geigy of India Ltd.* [(1985) 3 SCC 371] failed to notice the earlier decisions and adopted a broader interpretation. They held that individuals not fitting the four specified categories could still be considered workmen— however, the judgment in *A. Sundarambal v. Govt. of Goa, Daman and Diu* [(1988) 4 SCC 42] reaffirmed the importance of the earlier precedents, asserting that a person must fall within the defined categories to qualify as a workman. Ultimately, the legal position is crystalized in the case of *H.R. Adyanthaya and Ors. Vs. Sandoz (India) Limited* reported in 1994 5 SCC 737 wherein the five Judges' bench of Apex Court held that to be considered a workman under the ID Act, an individual must be employed in manual, unskilled, skilled, technical, operational, clerical or supervisory. It is not enough that he is not covered by either of the four exceptions to the definition. It is held that to attract provisions of Section 2(s) of the I.D. Act, the employee must show that he performs any work enumerated in the definition and that he is excluded under the four exceptions as provided in the definition.

11. For the adjudication of the status of a workman, what is required to be seen is an emphasis on the actual work performed by such an employee. In other words, if the nature of duties actually performed predominantly shows that he discharges duties to do the work of any of the categories listed in Section 2(s). He is not covered by exceptions of Section 2(s); it would be decisive of the matter that the employee is a workman, and the designation or salary of the employee would be irrelevant.

12. It is now well settled that the adjudication of the issue as to person working within the meaning of Section 2(s) of the I.D. Act has to be determined with reference to the principle of nature of his duties and functions. The dominant purpose of employees must be taken into consideration, and the gloss of some additional duties must be rejected while determining the status and character of a person. The Tribunal needs to first address itself as to various duties assigned to the employees and then draw a conclusion of law as to whether in the light of duties assigned to him would be whether the employee would be working or not.

13. According to the petitioner, respondent employees are performing supervisory or managerial duties. Therefore, It is necessary to consider the purport of the word "Supervisor". The word supervisor means a person who examines and keeps watch over the work of his subordinates and if they commit mistake, in any way correct them. He must see that the persons over whom he is supposed to supervise or do work assigned to them according to rules and regulations. Supervision means "supervision over men and not on machine". He must see how the employees will be engaged in different production tasks. It is necessary to show that there were at least some employees working under him whose work he must supervise. Whether an employee performs supervisory duties or not is preeminently a question of fact. Managerial or administrative

functions require a person to control the work of others. He is required to recommend leave, appraise work for promotion.

14. Keeping in mind the essential attributes of the workman in Section 2(s) of the I.D. Act, as referred above, it is necessary to consider the material placed on record by petitioner and respondents. Mr Sachin Desai, one of the employees, stepped into the witness box and, during his examination-in-chief, stated that he deposed on behalf of 26 employees and had knowledge of the nature of their work. He stated that all the workers are doing skilled, unskilled, managerial work in the petitioner company. The nature of the work performed by the respondents involves cutting HKL wood board by machine, making an optimizer, changing tools (cutter) to check the job, and cutting wooden material as per the cutting plan provided by supervisors. To drill material after lipping using M.T.C./ B.H.T./ B.H.X. and sticker by using the machine as per drawing provided by supervisors. To operate baz machine and do routing and drilling the wooden material as per plan provided by superiors. He deposed that employees of petitioner establishment are broadly divided into 5 Bands. K-Band, A-Band, O-Band, P-Band, T-Band. Out of such bands, the K-band is the lowest. He deposed that all respondent employees need to perform their work as per employees in A-Band, O-Band, P-Band and T-Band. He deposed that out of 26 employees, 25 hold ITI qualifications, and the remaining are 10th standard pass. All 26 workers were required to work three shifts, as detailed in the affidavit. Their predominant function is to operate machines. Except for K-Band employees, no other employees in any other Band are required to operate using machines. The petitioner has cross-examined Mr. Sachin Desai, and from his cross-examination, his statement made in the affidavit has not been demolished. He reiterated in the cross-examination that the respondent employees worked as per the instructions of their superiors.

15. Nine management witnesses have deposed, giving details of key result areas and the jobs of respondents of K-Band employees. Their status, privileges, and benefits apply to the Management Cadre, stating that NETAP trainees and apprentices work under the supervision of K-band employees, and the nature of working induction by respondent employees is supervisory in nature. They were selected through a recruitment process applicable to management staff. The respondent employees are evaluated annual performance paid in alignment with the performance rating applicable for Management Cadre employees. The respondent employees had undergone three days of management induction training.

16. However, witness Vaibhav Gondhalekar of the petitioner on behalf of the petitioner admitted that K-Band is the lowest Band. Supervisors belonged to A-Band, Managers belonged to P-Band, Engineers belonged to O-Band, Assistant Managers belonged to T-Band, and General Managers belonged to E-Band. The respondent workers holding to K-Band and quality field ITI have passed the 10th standard d examination. He also admitted that respondent employees are not

authorized to sanction or recommend leave. They cannot make policy decisions. They have no power to appoint or terminate and have the lowest wages of the five Bands. He also admitted that the appointment order does not mention the nature of the duties. He admitted that the unit has no automatic process for placing a raw material in a particular machine. Finished goods come out in a particular form, including furniture. He also admitted that all 26 respondent workers wrote production reports, which were produced on record. The worker's shifts are handed in writing and filled in by K-Band employees. He admitted that if K-Band employees face any problem, it must be addressed by the shift manager or the supervisor. He admitted that all work in the packaging department is done by K-Band employees. He admitted that K-band employees check quality control and work in all sections, namely cutting, pressing, lipping, routing, drilling, home assembly finishing, and qualitative control, which requires skill. He also admitted that no duty list was provided to 26 respondent employees.

17. The next witness, on behalf of the petitioner, admitted in his cross-examination that K-Band employees are in the lowest rank of other employees and are working under the control of the rest of the Band employees. He also admitted that the appointment orders of the respondents' employees and critical result areas should be mentioned. The fourth witness, Mr. Bajabalkar, admitted that K-Band has no authority to sanction or recommend him. They have no authority to appoint, dismiss or write confidential reports. They have no authority to make policy decisions. They work on the sixth floor, which has no table or chair, and work in three shifts. Mr. Langde, another witness on behalf of the petitioner, admitted that K-band employees are doing jobs under his supervision and directions. Key Result Areas and respondents' jobs are not mentioned in the appointment order of K-band employees. Mr Sachin Jadhav, quality head witness on behalf of the petitioner, admitted in cross-examination that cubicles provided to P-Band employees were not provided to 26 respondent employees. He admitted that 25 employees hold ITI qualifications, and Exhibit-38 refers to the name of the operator of K-Band, which documents need to be filled in by K-Band employees. Mr Raut admitted on behalf of the petitioner that there are about 72-80 workmen in the K-Band category who have no authority to sanction leave and are required to work in three shifts.

18. From the aforesaid analysis of evidence, no doubt is left that respondent employees have done manual, skilled and unskilled work. Their main perk appears to be the operation of the machine along with the other manual work. There is no material on record to show that they have to keep watch over the work of their subordinate employees in any way. As observed earlier, to conclude that a person is working in a supervisory capacity, it is necessary to prove that there were at least some employees working under them whose work they are required to supervise. However, except for some trainees who used to work under them, there is no material on record to show that any employees were working under them. The material on record indicates they have no power or

duty to recommend leave, or appraise work for promotion.

19. While exercising writ jurisdiction ordinarily, it is not necessary to go into details of evidence, but the necessity of it has arisen since, according to the petitioner, the Tribunal failed to examine the evidence at length. The Tribunal is a fact-finding tribunal and ought to have assigned detailed reasons; however, non-supply of meticulous reasoning while deciding preliminary issue cannot be said to be fatal when the ultimate conclusion reached by the Industrial Tribunal that these 26 employees are workmen under section 2(s) of I.D. Act seems to be the correct conclusion based on the evidence on record. From the evidence on record, it is well established that respondents employees are doing manual, skilled, unskilled work and, therefore, are covered in one of the categories of Section 2(s) of the I.D. Act.

20. The Tribunal has held that respondent employees work as manual, skilled and unskilled. They belong to the lowest Band and cannot be termed as a managerial or supervisory category. It is also held that these employees are not covered by four exceptions to the defendant and, therefore, they are working. In the circumstances, findings, which were arrived at by the Tribunal to the effect that respondent employees are workmen, do not want interference under Articles 226 and 227 of the constitution of India. The order of the Industrial Tribunal does not fall into the category of manifest error or order passed in clear ignorance or disregard of provisions of law or resulting in gross injustice. The order of the Industrial Tribunal does not fall in the categories referred by the Apex Court in the case of *Surya Dev Rai Vs. Ram Chand Rai* reported in (2003) 6 SCC 675.

21. On review of material on record, I have come to the conclusion that the Industrial Court was correct and justified in its conclusion. In the circumstances of the case, I do not find any reason to interfere with the impugned order of Industrial Court.

22. The writ petition, in the given circumstances, is dismissed.

23. There shall be no orders as to costs.