

(2010) 09 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 3212 of 2008

Indo-European Breweries Ltd.

APPELLANT

Vs

Dnyaneshwar Dhanwate and Others

RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1)
Maharashtra Contract Labours (Regulation and Abolition) Rules, 1971 — Rule 54, 59
Maharashtra Minimum Wages Rules, 1963 — Rule 27, 27(2)
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28, 32

Citation : (2011) 1 ALLMR 188 : (2011) 3 LLJ 527 : (2011) 2 MhLj 167

Hon'ble Judges : V.R. Kingaonkar, J

Bench : Single Bench

Advocate : T.K. Prabhakaran, for the Appellant; P.L. Shahane, for Respondent Nos. 1 to 9, 11 to 13, 15, 16 and 18 to 21 and R.N. Dhorde holding for U.S. Sawaji, for the Respondent

Judgement

V.R. Kingaonkar, J.—The Petitioner is a registered Company. By this petition, the Petitioner impugns judgment and order rendered by learned Member, Industrial Court, Aurangabad, in complaint (ULP) No. 52/2005. By the impugned judgment, the complaint filed by Respondents No. 1 to 22 came to be allowed and the Petitioner was directed to allow them to resume their duties and also to pay full backwages to them from 8th March, 2005 until they have been reinstated.

2. The Respondents No. 1 to 22 filed complaint application (ULP) No. 52/2005 alleging that the Petitioner - Company committed unfair labour practices as envisaged under Items 9 and 10 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short, "the MRTU & PULP Act"). The Respondent No. 3 - A.B. Contractors was not initially joined in the proceedings instituted by the Respondents No. 1 to 22, who will be hereinafter referred as "workmen", but was joined subsequently at the instance of the Petitioner. For, the Petitioner asserted that the workmen were the

employees of the Respondent No. 23 which is a duly registered Labour Contractor. The Petitioner's case before the Industrial Court was that the workmen were not the employees of the Petitioner, but were employed by the Respondent No. 23 - A. B. Contractors. The Petitioner thus denied employer-employee relationship between itself and the Respondents No. 1 to 22. It is for such reason that the Petitioner raised objection to the jurisdiction of the Industrial Court to try the complaint proceedings.

3. It is undisputed that the Petitioner is a registered Company having its bottling plant in MIDC area at Aurangabad. The Petitioner deals in water treatment and bottling of soft drinks having brand names viz. Coca-cola, Thumps-up, Fanta, etc. There are large number of employees engaged by the Petitioner Company to work in its industrial unit.

4. The workmen alleged that they were well experienced and skilled workers having prior experience to work in other industrial units. They joined the Petitioner Company at different dates between February, 2004 to February, 2005. They were regularly employed by the Petitioner Company. The Petitioner Company used to pay salaries to them. Each of them had worked for more than 240 days with the Petitioner. Their work was of permanent nature. They were required to work for more than twelve (12) hours a day without grant of overtime pay. They were being paid wages only for eight (8) hours for a day. The Petitioner had not contributed to the Provident Fund and E.S.I. as required under the law. They along with other various workmen decided to join a Workers' Union, namely, "Bhartiya Kamgar Sena" (for short, "B.K.S.") w.e.f. 7th March, 2005. A gate-meeting was held which was disrupted by the watchman and security guards of the Petitioner. The security personnel of the Petitioner had opened fire during the incident which occurred on 9th March, 2005 in order to disperse the workmen who were agitating their lawful demands. The workmen further alleged that they were not allowed to work in the premises of the factory. With the intervention of senior police officer, there was mutual settlement. The Petitioner agreed to provide work to 30 workmen immediately and also to provide work to the remaining workers after few days. The talks of settlement were held between the representatives of the workers and the Petitioner on 14th March, 2005 in the office of Deputy Commissioner of Labour, Aurangabad. The Petitioner allowed a batch of workers to join the duty in accordance with the settlement talks, but ultimately refused the Respondents No. 1 to 22 (workmen) to resume the duty. The workmen alleged that such refusal to provide work to them was unfair labour practice adopted by the Petitioner with ulterior motive and only because they had joined the Union (B.K.S.). Though they were directly employed by the Petitioner, yet, false plea was raised by the employer that they were engaged by the contractor i.e. the Respondent No. 23. On these premises, they sought direction to the Petitioner to desist from the unfair labour practices, to allow them to resume the duties and for payment of the entire backwages.

5. The Petitioner's case, as unfolded from the pleadings submitted to the

Industrial Court, was that the workmen were never employed by the Petitioner. The Petitioner alleged that peripheral activities including house-keeping was being carried out in the premises of the factory through agency of the Respondent No. 23, which is a licensed contractor under provisions of the Contract Labour (Regulation and Abolition) Act, 1970 (for short, "the Contract Labour Act"). The Petitioner asserted that the Industrial Court had no jurisdiction to entertain the complaint application in view of the disputed question pertaining to existence of employer-employee relationship between the parties. The Petitioner contended that the labours of the Contractor with the active support of the B.K.S. had resorted to violent demonstrations in front of the factory premises, with help of a large number of strangers and had resorted to violence. Therefore, the security guards had to use reasonable force to prevent criminal trespass by the violent mob and to ensure security of the factory premises. The presence of the Respondents No. 1 to 22 was found to be detrimental to the safety of the industrial unit and, therefore, the Respondent No. 23 (Contractor) had terminated their contractual services. The Petitioner chiefly asserted that there was no privity of contract between itself and the Respondents No. 1 to 22 (complainants) and as such, the proceedings under the MRTU & PULP Act were not maintainable as against itself. The Respondent No. 23 (Contractor) supported the case of the Petitioner in all respects, including the fact that the Respondents No. 1 to 22 were engaged as contract labours and their services were terminated on 8th March, 2005 as a result of their participation in the violent demonstrations within the premises of the Petitioner's factory.

6. The learned Member of the Industrial Court struck certain issues in view of the pleadings of the parties. The parties adduced oral and documentary evidence in support of the rival contentions. On strength of material placed on record during the trial, the learned Member of the Industrial Court held that the workmen were employees of the Petitioner and not of the Contractor i.e. the Respondent No. 23. The learned Member of the Industrial Court held that the Petitioner failed to implement settlement to reinstate the workmen and thereby committed unfair labour practices. It is also held that the jurisdiction was available with the Industrial Court to try the proceedings under the MRTU & PULP Act. In keeping with such findings, the Industrial Court allowed the complaint application vide the impugned judgment.

7. Mr. T. K. Prabhakaran strenuously argued that the Industrial Court failed to appreciate the material placed before itself which indicated absence of employer-employee relationship between the contesting parties. He would submit that when the Contractor (Respondent No. 23) confirmed the fact that the complainants were the contract labours and supportive evidence was tendered in this context, the Industrial Court ought not to have held detailed enquiry to decide the issue pertaining to existence of employer-employee relationship between the Petitioner and the workmen. He argued that the complainants failed to prove that they had completed 240 days of continuous service in a year. He further argued that the Industrial Court did not appreciate the fact that letter

dated 12th March, 2005, issued by the Union (B.K.S.) addressed to the Commissioner of Police revealed that there were 150 contract labours and such admission vindicated stand of the Petitioner. Mr. Prabhakaran sought reliance on various authorities in support of his contention that the issue of employer-employee relationship could not be tried and decided by the Industrial Court. He would submit that the Industrial Court could not have gone into such issue which is covered u/s 10 (1) of the Contract Labour Act. Mr. R. N. Dhorde, learned advocate for the Contractor (Respondent No. 23) supports the case of the Petitioner. Per contra, Mr. Shahane would submit that the admissions made by the representative of the Petitioner before the Deputy Commissioner of Labour and the voluminous record produced before the Industrial Court would sufficiently demonstrate existence of the employer-employee relationship between the contesting parties. He also referred to various authorities in support of the workmen. I shall refer to the citations relied upon by the advocates of the parties in the course of further discussion.

8. Question involved in this petition is:

Whether jurisdiction of the Industrial Court is ousted no sooner there is denial to "employer-employee" relationship between the contesting parties?

Incidental question involved in the petition is:

Whether determination of the existence of such relationship by the Industrial Court can be undertaken by the Industrial Court in an appropriate case when there is material available to positively hold that such relationship does exist between the contesting parties notwithstanding denial of such relationship by the employer?

In other words, it is necessary to examine whether the issue pertaining to employer-employee relationship becomes totally untouchable as and when existence thereof is denied by the employer and no sooner it is so denied, the Industrial Court is required to shrug off the judicial responsibility to decide such an issue by raising the arms above.

9. Coming to the fact situation obtained in the present case, it may be gathered that the terms of the labour contract between the Petitioner and the Respondent No. 23 would indicate that the Contractor was required to engage labours for the purpose of "house-keeping". The nature of skill and work of the complainants - workmen does not match with the work required to be executed for the purpose of house-keeping. The house-keeping work includes sanitation, cleaning, up keeping of the premises, etc. The complainants appear to be skilled as water-treatment operators, electricians, bottle-checkers (Light Inspector), water-treatment assistant, EDP Operator, so on and so forth. Apparently, the nature of duties of the complainants and the work assigned to the Contractor would mismatch and hence, would improbabilize their employment by the Contractor. The Respondent No. 23 (Contractor) failed to produce any reliable evidence to establish that the complainants were employed by him. Though copies of certain

muster roll and the pay rolls were produced by the Respondent No. 23 (Contractor), yet, the Industrial Court noticed that neither of the documents bore signatures of the complainants, nor they were in conformity with Rule 59 of the Maharashtra Contract Labour Act. Rule 59 reads as follows:

59. Muster Roll, Wages Registers, Deduction Register and Overtime Register

(1) In respect of establishments which are governed by the Payment of Wages Act and the rules made thereunder, or the Minimum Wages Act and the rules made thereunder, the following registers and records required to be maintained by the contractor as employer under those Acts and the rules made thereunder shall be deemed to be registers and records to be maintained by the contractor under these rules:

- (a) Muster Roll;
- (b) Register of Wages;
- (c) Register of Deductions;
- (d) Register of Overtime;
- (e) Register of Fines;
- (f) Register of Advances.

(2) In respect of establishments not covered under Sub-rule (1) the following provisions shall apply, namely:

(a) Every contractor shall maintain a muster-roll-cum-wage register" as prescribed by Sub-rule (i) of Rule 27 of the Maharashtra Minimum Wages Rules, 1963;

(b) Every contractor shall issue attendance card-cum-wage slip as prescribed by Sub-rule (2) of Rule 27 of Maharashtra Minimum Wages Rules, 1963 to the workers;

(c) Signature or thumb-impression of every worker on the register of wages or wages-cum-muster roll as the case may be, shall be obtained and entries therein, shall be authenticated by the initials of the contractor or his representative, and duly certified by the authorised representative of the principal employer as required by Rule 54;

(d) *****

(e) *****

Perusal of Rule 59 reveals that the contractor is under legal obligation to maintain Muster Roll and Register of Wages in appropriate formats. The Contractor, in the present case, never paid contribution towards E.P.F. nor duly proved maintenance of regular Muster Roll-cum-Wage Register as prescribed by Sub-rule (2) of Rule 27 of the Maharashtra Minimum Wages Rules, 1963. These

are tale-telling circumstances.

10. The evidence on record further goes to show that the Petitioner admitted the employer-employee relationship before the Deputy Commissioner of Labour, Aurangabad during process of conciliation. The Petitioner had agreed to provide work to those workmen who were refused the permission to enter the factory premises after the violent incident which had occurred on 9th March, 2005. It has come on record that on 9th March, 2005, the security guards of the Petitioner had opened fire at the factory gate and some of the workmen were injured during course of such incident. On 10th March, 2005, the police had arrested eight (8) personnel of the Management for alleged reckless firing. So also, a large number of workmen were arrested in the context of the said incident. It cannot be denied that the Management of the Petitioner was upset due to such incident. It is but natural that the Management nurtured grudge against those workmen who were agitating their demands for the payment of overtime wages, etc. through the Union (B.K.S.).

11. The evidence of the workmen goes to show that they had worked in similar other companies before joining their services with the Petitioner. Considering their past experience and the skill in the other factories including the bottling units, it does not stand to reason that they would have accepted the employment under the Contractor for sundry house-keeping work. It is significant to notice that though the Contractor produced attendance-cum-wages register and leave record of its employees, yet, such record does not include names of the complainants. The witness examined on behalf of the Contractor admitted that the wages-cum-muster roll filed below Exh-C22 does not bear signature of the authority of the Petitioner and the column of the name of the principal employer is left blank. Though name of employee Devesh Gupta is shown at serial No. 2 in that wage register for March, 2005, yet, witness of the Contractor admitted that said Devesh Gupta is permanent employee of the Petitioner. The admissions of said witness gave serious jolt to the plea raised by the Petitioner about absence of employer-employee relationship between itself and the workmen. It has come on the record that the Petitioner issued a letter (Exh-U24) addressed to the Senior Police Inspector, MIDC Waluj Police Station wherein it is assured that the workmen will be taken back to do their work and their problems would be discussed further. The record further shows that proceedings for re-conciliation were initiated before the Deputy Labour Commissioner, Aurangabad. The Petitioner was represented by one Mr. Ram Sagre, Plant Manager Shri Pawde and H.R. Executive when the settlement talks were held. It appears that on 12th May, 2005, agreement was arrived at to allow all the workers to resume their duties. The Petitioner did not raise any plea before the Deputy Commissioner of Labour that the complainants (workmen) were the contract labours of the Respondent No. 23. It was not the case of the Petitioner before the Deputy Commissioner of Labour or the police authorities that the complainants were the contract labours and that their services were terminated by the Contractor i.e. the Respondent No. 23. It is for the first time, during proceedings before the Industrial Court,

that such a plea was raised by the Petitioner with active support of the Respondent No. 23 (Contractor). The large number of documents placed on record vide Exh.-U21 and Exh.-U47 purport to show that each of the complainant was assigned work by the Petitioner as per the shift schedule. Had it been a fact that they were contract labours, the Petitioner had no reason to indicate their names in the shift schedules maintained by it. The shift schedules are signed by the Plant Manager of the Petitioner. The Industrial Court found that the Petitioner had the compunction to deny signatures of the concerned officer on the shift schedules though the documents were found to bear the signatures of the same officers which were the undisputed one. The learned Member of the Industrial Court also noticed that the Contractor was unable to identify the workmen with their names and the particulars of employment. Thus, not only the documentary evidence placed on record, but admission of the Petitioner before the Deputy Commissioner of Labour, the police authorities and also the conduct of offering such denial only during course of proceedings before the Industrial Court, would indicate existence of the employer-employee relationship between the contesting parties.

12. Mr. Prabhakaran seeks to rely on *Krantikari Suraksha Rakshak Sanghatna v. S.V. Naik and Ors.* 1993 (1) CLR 1003 (SC). The Apex Court held that the ULP Court had no jurisdiction to proceed on a presumption of employer-employee relations between the Company and the security guards because the Security Guards Act, 1981 was a complete Code and whether there was any alleged breach, it was open to the *Krantikari Suraksha Rakshak Sanghatana* to move the Security Guards Board under the said Act. The fact situation in the given case was altogether different. The Apex Court noticed that the complaint proceeded principally on the footing that the Respondent No. 3 - Agency in the given case had not obtained a licence under the Contract Labour Act and, therefore, the security guards had automatically become workmen of the principal employer. So also, reliance is placed on certain observations in following cases:

(i) *Indian Seamless Metal Tubes Limited Vs. Sunil Rambhau Iwale and Others*, (ii) *Sarva Shramik Sangh v. India Smelting and Refining Company Ltd.*, 2003 3 CLR 949 (SC) (iii) *Maharashtra General Kamgar Union Vs. Royal Western India Turf Club Ltd. and Others*, (iv) *Janprabha Offset Works v. Sarva Shramik Sabha and Anr.* 2007 3 CLR 854 *Maharashtra State Cotton Growers Marketing Federation Ltd. v. Asha Joseph D'mello*, 2007 3 CLR 987.

I have gone through the above referred authorities. The fact situation in each of the above cases is quite different from that of the present one.

13. Mr. Prabhakaran further relied on *Workmen of Nilgiri Co-op. Mkt. Society Ltd. v. State of T. N. and Ors.* 2004 SCC (L&S) 476. The Apex Court held that in order to determine whether employees are the contract labours or have been employed by the principal-employer different tests would be applicable in different facts and circumstances. It is held that whether the contract is sham or camouflage is not a question of law which can be arrived at having regard to the provisions of

Contract Labour (Regulation and Abolition) Act, 1970. It is observed:

It is for the industrial adjudicator to decide the said question keeping in view the evidences brought on record. Where a person is engaged through an intermediary or otherwise for getting a job done, a question may arise as the appointment of an intermediary was merely sham and nominal and rather than camouflage where a definite plea is raised in the Industrial Tribunal or the Labour Court, as the case may be, and in that event, it would be entitled to pierce the veil and arrive at a finding that the justification relating to appointment of a contractor is sham or nominal and in effect and substance there exists a direct relationship of employer and employee between the principal employer and the workman.

14. Mr. Prabhakaran further seeks to rely on certain observations in the following cases:

(i) Philips Workers Union, Thane v. State of Maharashtra and Anr. 1986 Mh.LJ. 332 : 7957 2 LLJ 91 (ii) Cipla Ltd. Vs. Maharashtra General Kamgar Union and Others, (iii) Dena Nath and Ors. v. National Fertilisers Ltd. and Ors. 1992 1 CLR-1 (SC) (iv) Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.,

It is important to note that in Cipla Ltd. v. Maharashtra General Kamgar Union and Ors. (supra), the Apex Court held:

But one thing is clear - if the employees are working under a contract covered by the Contract Labour (Regulation and Abolition) Act, then it is clear that the Labour Court or the industrial adjudicating authorities cannot have any jurisdiction to deal with the matter as it falls within the province of an appropriate Government to abolish the same. If the case put forth by the workmen is that they have been directly employed by the Appellant-company but the contract itself is a camouflage and, therefore, needs to be adjudicated is a matter which can be gone into by appropriate Industrial Tribunal or Labour Court. Such question cannot be examined by the Labour Court or the Industrial Court constituted under the Act. The object of the enactment is, amongst other aspects, enforcing provisions relating to unfair labour practices. If that is so, unless it is undisputed or indisputable that there is employer-employee relationship between the parties, the question of unfair practice cannot be inquired into at all. The Respondent - Union came to the Labour Court with a complaint that the workmen are engaged by the Appellant through the contractor and though that is ostensible relationship the true relationship is one of master and servant between the Appellant and the workmen in question. By this process, workmen repudiate their relationship with the contractor under whom they are employed but claim relationship of an employee under the Appellant. That exercise of repudiation of the contract with one and establishment of a legal relationship with another can be done only in a regular Industrial Tribunal/Court under the I.D. Act.

The question whether the employees are directly employed by the Contractor may arise and will have to be determined in the peculiar fact situation obtained in each case. It would depend upon control over the employees, the nature of the work for which they have been employed, the nature of the contract between the principal employer and the Contractor and the manner in which the employees are put on the pay-rolls.

15. Mr. R.N. Dhorde referred to *Janprabha Offset Works v. Sarva Shramik Sangh, Jalgaon* and Anr. 2007 (4) Mh.L.J. 97. A Single Bench of this Court held that where relationship between the employer and employee is disputed, a complaint of unfair labour practices u/s 28 of the MRTU & PULP Act would not be tenable. The relevant observations appearing from paras No. 13 and 14 of the said judgment may be usefully quoted as below:

13. It is thus clear that though the Apex Court in all those matters, where the employees, who claimed to be employees of the principal employer, though they were employed by a contractor, has unequivocally ruled that, to bestow jurisdiction upon a Court under the said Act, it is necessary that there has to be a pre-existing relationship between the employer and employee. When the relationship is disputed, the complaint under the said Act, would not be tenable.

14. Insofar as the judgment of the Division Bench in the case of *Hindustan Coca Cola Bottling s/w Pvt. Ltd. v. Narayan Rawal and Ors.* reported in 2001 3 CLR 1025, this Court held that if the employer-employee relationship is established before the Industrial Tribunal or Labour Court under the Industrial Disputes Act or the employer-employee relationship is indisputable, then, complaint under the MRTU and PULP Act would be maintainable. The Division Bench further observed that if any time, the employee was recognized by the employer and subsequently repudiate such a question would be an incidental question arising u/s 32 of the Act and the Labour Court or the Industrial Court, as the case may, is bound to decide the said question. In the present case it can be seen that it is not the case that the Respondent Dainik Janashakti at any point of time recognized the Respondents/employees as its employees.

Perusal of the above observations would show that nowhere the learned Single Judge has held that jurisdiction of the Industrial Court is ousted in such a matter merely on strength of denial of employer-employee relationship by the alleged employer. In *Akhil Bhartiya Shramik Kamgar Union Vs. Buildtech Constructions and Others*, another Single Bench of this Court held that mere statement of denial of relationship made in the reply affidavit or for that matter written statement by itself cannot be the basis for taking a view the court has no jurisdiction to try and decide the complaint under the MRTU and PULP Act. Taking survey of various case-law, the learned Single Judge held that the issue is obviously of a jurisdictional fact which is required to be inquired into by the concerned Court.

16. So also, in *Fulchand Baburao Gedam v. Lokmat, Proprietors, Lokmat*

Newspapers Ltd. through its Managing Director, a Division Bench of this Court held that when the question is not whether the contract is allegedly sham and bogus device, the complaint u/s 28 of the MRTU and PULP Act would be maintainable. Such complaint would not be maintainable where the employees claimed that the contract itself is a sham and bogus device and they are the employees of principal employer though are shown to be that of the Contractor.

17. Mr. Shahane referred to various other cases viz.--

(i) ACC Ltd. Vs. Associated Cement Staff Union and Others (ii) Shaukat Adam Malim Vs. Kokan Mercantile Co-operative Bank Ltd., Mumbai and Others, (iii) Godrej and Boyce Manufacturing Company Private Limited Vs. Kherulla Hasanali Pathan and Another, (iv) Zim Laboratories Limited Vs. Nagpur General Labour Union, (3) Doodh Kamgar Sabha Vs. Zurisingh Beechusing and Co. and Another, (vi) National Textile Corporation (Maharashtra North) Ltd. v. Anant Parshuram Joshi, 2000 (12) L.J. 138 (vii) The Commissioner, Karnataka Housing Board Vs. C. Muddaiah, (viii) Roshandeen v. Preeti Lal, 2002 (1) L.J. (SC) 113 (ix) R.M. Yellati v. The Assistant Executive Engineer, 2005 3 C.L.R. 1028 (x) Union of India etc. etc. v. K.V. Jankiram, etc. 1991 2 C.L.R. 635 (xi) Abdul Majid Khan and Others Vs. State and Others,

It is not necessary to discuss ratio of each of the case law in detail.

18. Taking overall view of the matter, I am of the considered opinion that jurisdiction of the Industrial Court is not ousted only because denial is offered to the relationship between the complainants and the employer. The Industrial Court is not immediately required to refrain itself from exercising jurisdiction under the provisions of the MRTU & PULP Act only for the reason that there is denial offered by the employer to existence of such relationship. The Industrial Court may not entertain the complaint when there is averment made by the employees that the agency agreement is merely a facade, to elude them from further benefits under the MRTU and PULP Act. In *Hindoostan Spg. & Wvg. Mills Ltd. and Anr. v. Sharad G. Khanolkar and Ors.* 2002 (3) Mh.L.J. 794, a Single Judge of this Court held that it is open to the complainants to demonstrate that the relationship was never disputed earlier or that it is indisputable because of the conduct of the employer. The relevant observations may be usefully quoted as follows:

The Complainants in a Complaint would know if the relationship is undisputed only when the employer filed a written statement and disputed the relationship. It would then be open to the Complainants to demonstrate that the relationship was never disputed earlier or that it is indisputable based on the pleadings before the Industrial Court. These pleadings would include any annexures to the Complaint and the written statement.

19. In the wake of peculiar facts and circumstances obtained in the present case, the findings of the Industrial Court cannot be termed as perverse or arbitrary. In *Workmen of Nilgiri Co-op. Mkt. Society Ltd. v. State of T. N. and Ors.*

(supra), which is a case relied upon by the Petitioner, it is observed that findings of the Tribunal would not normally be interfered with by the High Court in exercise of power of judicial review. It is held that whether workers (employees) are employed by the principal employer or by the Contractor, is purely a question of fact. The Apex Court observed:

The question whether the relationship between the parties is one of employer-employee, is pure question of fact and ordinarily, the High Court while exercising its power of judicial review shall not interfere with the finding.

It need not be reiterated that the findings of the Industrial Court, in the present circumstances and facts, cannot be termed as perverse or arbitrary and as such, interference in the findings of fact is uncalled for, in the exercise of the power of judicial review. Needless to say, the petition would fail. Hence, the petition is dismissed. No costs.