

**(2016) 01 GUJ CK 0090**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 16274 of 2015**

Kusters Calico Machinery Pvt. Ltd.

APPELLANT

Vs

Mayurkumar J. Pathak & Ors.

RESPONDENT

**Date of Decision : 12-01-2016**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10(1), 2(s)

**Citation :** (2016) 1 CLR 979 : (2016) 149 FLR 682 : (2016) LabLR 617 : (2016) LIC 2743

**Hon'ble Judges :** Paresh Upadhyay, J.

**Bench :** Single Bench

**Advocate :** Yogen N. Pandya, Advocate, for the Appellant; P.P. Majmudar, Advocate, for the Respondent

**Final Decision :** Allowed

## **Judgement**

Paresh Upadhyay, J. (Oral) - The petitioner employer has challenged the order passed by the Assistant Labour Commissioner, Vadodara - the appropriate Authority under the Industrial Disputes Act, 1947 making the Reference dated 24.02.2015 to the Labour Court, Vadodara. The terms of the said Reference is, as to whether the respondent No.1 should be reinstated in service with consequential benefits or not. The said Reference is registered as Reference T (L.C.) No.29 of 2015.

2. Rule.

3. Heard learned advocates.

4. Mr.Yogen Pandya, learned advocate for the petitioner employer has submitted that in the proceedings before the Assistant Labour Commissioner itself, it was categorically pointed out that the respondent No.1 is not the "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. Learned advocate for the petitioner has taken this Court through the material on record (reference to which is made hereinafter) to contend that the impugned reference

is illegal. It is submitted that the impugned order be quashed and set aside.

5. On the other hand, Mr. Majmudar, learned advocate for the respondent No.1 has contested this petition by referring to the affidavit in reply filed by respondent No.1 dated 22.11.2015. Reliance is also placed on the decision of Hon'ble the Supreme Court of India in the case of Ved Prakash Gupta v. M/s. Delton Cable India (P) Ltd. reported in AIR 1984 SC 914 to contend that what are the parameters for the concerned employee to be treated as a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. It is submitted that this petition be dismissed.

6. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.

6.1 Section 2(s) of the Industrial Disputes Act, 1947 reads as under.

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature]."

6.2 The assertion of the respondent No.1 himself, before the Assistant Labour Commissioner was to the effect that at the time of his termination, he was working as Manager (HR-Legal) and further that his basic pay was Rs.52,000/- per month (vide Annexure -C to this petition).

6.3 Additionally, it is also on record that along with relieving order, respondent No.1 was paid Rs.1,17,970/- as one month notice pay. (This was over and above other payments).

6.4 Further, it is the case of respondent No.1 himself, as contained in the material annexed with the affidavit in reply, that he was not only working in the supervisory capacity and was drawing wages exceeding Rs.10,000/- per month but he was employed mainly in the managerial and administrative capacity. The

following are the assertions of respondent No.1.

"Page No.58 and 59

I had suspended 02 union presidents with your permission and 01 office staff Mr. Gaurav with your permission and clean the organisation.

Also so many disciplined issued I had solved in my tenure of HR specially related to Mr. Shankar-Driver and Union leaders.

You first asked me to do strict step against those employees who are not follow the discipline and when those employees come to you with my complain due to my strict step then also you take action against me .

Many employees have common feeling that if MD has no interest to run the organisation in balanced way and with profitability then why we should we do work with fully energy and interest. So please look in to the seriousness of the above matters please talk with concern and resolve the issue. Many employees have feeling that you should delegate your over burden work like Purchase, maintenance of building, Accounts and HR to other competent persons within the company like you had given charge to Mr. Umesh Thaker (Chairman-5S) and Mr. Jethwani (head - Converting business).

Many senior employees have feeling that you are not interested to continue senior employees because all have an idea about your management style, if you need not senior employees then inform us we will find our way.

As an HR Manager of the company I have to inform you all above things in person but you have no time to listen me so I am sending this detailed mail to you for your information.

In future if I have any kind of physical or mental harassment from any one due to political policy of the local management then I will take legal action.

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I had given my 17 valuable years to the company and having responsibility of HR, ADMINISTRATOR, LEGAL, INDIRECT TAX, EXPORT and IMPORT and fulfilled that responsibilities with successfully if I get this kind of support from the management after 17 years of working it is not good for the health of our industry culture.

On 7th February, 2014 Mr. Reddy had announced to give charge of HR to Mr. Keyur Shah - DGM (Converting). He is Diploma in Electrical. He don't have any HR background and he is also ready to take charge. (Please look into the attached mails for more specify on subject what I want to explain you. Because of continuous efforts for betterment of organisation he wants to shift me from HR)

As we commercial and HR people are not getting good support from Mr. Reddy because he had technical and marketing back ground so as per my opinion

Company need financial and HR director for running commercial and financial smoothly and for getting good profit.

There are so many other things which I cannot write here, that I will placed you at the time of personal hearing.

So, looking in to the fact of above please do the needful to at your end as early as possible to solve the issue and for getting GOOD PROFIT OUT OF THE TURNOVER.

If your allow me to take legal action with your consent letter and approval, in written, I will take action against him as per the procedure established by law.  
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Same way we have to recruit employees who have capacity to learn our product, have capacity to maximise profit by his /her knowledge etc. We make sure that selected Candidate shall be asset of the company not to be a liability.

Please consider good points at the time of recruitment. We are always here to assist you as and when required so please feel free to talk with us when you have any confusion at the time of recruitment."

6.5 From the above material, this Court finds that not only there is ample material on record but it is the case of respondent No.1 himself, that he was not only working in the supervisory capacity and was drawing wages exceeding Rs.10,000/- per month but he was employed mainly in the managerial and administrative capacity and therefore it needs to be held that the respondent No.1 is not a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The provisions of the Industrial Disputes Act, 1947 therefore could not have been invoked by him to challenge his termination.

6.6 The impugned order therefore needs to be quashed and set aside. This Court further finds that non interference by this Court would result into miscarriage of justice against respondent No.1 as well, since after substantially long time it would be held that he was before a wrong forum. For this reason also, the impugned order needs to be set aside. So far the decision of Hon"ble the Supreme Court of India as relied by learned advocate for the respondent No.1 in the case of Ved Prakash Gupta (supra), is concerned, there can not be any dispute with regard to proposition of law, however whether the respondent No.1 can be said to be a "workman" or not is the question of fact and not the question of law and when in fact it is found that he is not a "workman", the said decision will not take the case of the respondent No.1 any further. This petition therefore needs to be allowed.

7. For the reasons recorded above, this petition is allowed. The impugned order passed by the Assistant Labour Commissioner, Vadodara - the appropriate Authority under the Industrial Disputes Act, 1947 making the Reference dated 24.02.2015 to the Labour Court, Vadodara order is quashed and set aside. Rule is made absolute. No order as to costs.