

(2004) 06 BOM CK 0026
In the Bombay High Court
Case No : C.A.J. W.P. No. 4348 of 1996

Netaji Krishnaji Pawar

APPELLANT

Vs

M.D., Ajinkyatara Sahakari Sakhar Karkhana Ltd.

RESPONDENT

Date of Decision : 25-06-2004

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 3(13)

Citation : (2005) 2 BomCR 432 : (2005) 1 LLJ 526

Hon'ble Judges : Nishita Mhatre, J

Bench : Single Bench

Advocate : R.S. Kulkarni and Nikhil Kulkarni, instructed by L.M. Acharya, for the Appellant; D.S. Sawant, for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—This Petition challenges the order of the Industrial Court passed in the Revision Application filed under the MRTU & PULP Act and the order of the Labour Court in a complaint filed under Item 1(a), (b), (d), (f) and (g) of Schedule IV of the MRTU & PULP Act. The Labour Court and the Industrial Court have held that the Petitioner is not an employee as defined u/s 3(13) of the Bombay Industrial Relations Act.

2. The Petitioner was working with the Respondent since November 6, 1987 on a monthly salary of Rs. 2648/-. He was appointed as an Agricultural Overseer. It appears that certain allowances and increments which the Petitioner was entitled to were not paid to him and, therefore, he demanded the same from the Respondent. A show-cause notice was issued to the Petitioner under the standing orders framed for the sugar industry under the Bombay Industrial Relations Act (for short, "BIR Act"). A charge sheet was issued against the Petitioner since the explanation given was not satisfactory. Thereafter, an enquiry was instituted and it was found that the Petitioner had committed misconduct. The Petitioner was, therefore, dismissed from service. Thereupon, the Petitioner filed a complaint under Item 1(a), (b), (d), (f) and (g) of Schedule IV of the MRTU & PULP Act.

3. The first contention raised by the employer in reply to the complaint was that the Petitioner was not an employee within the meaning of Section 3(13) of the BIR Act and, therefore, the complaint itself was not maintainable. Accordingly, a preliminary issue was framed and the parties led evidence on the issue as to whether the Petitioner was an employee. On assessing the evidence before it, the Labour Court came to the conclusion that the work done by the Petitioner was in the technical capacity and since he was admittedly drawing basic salary of more than Rs. 1000/-per month, he was excluded from the definition of "employee". Being aggrieved by this order, the Petitioner preferred Revision Application (ULP) 451 of 1995. The Industrial Court came to the conclusion that the Petitioner was doing technical work and, therefore, was not an employee within the definition under BIR Act. The Industrial Court came to the conclusion that the evidence on record established clearly that the Petitioner was working in a technical capacity and was drawing a monthly basic wage exceeding Rs. 1000/-.

4. The present petition has been filed against both these orders. Dr. Kulkarni, learned counsel appearing for the Petitioner, submits that the Petitioner was clearly an employee as defined u/s 3(13) of the BIR Act. He submits that the very fact that the Petitioner was issued a show-cause notice and a charge sheet under the standing orders framed in respect of the employees of sugar industries, the respondent had accepted the Petitioner as an employee. He submits that the Respondent was estopped from claiming that the Petitioner was not an employee u/s 3(13) of the BIR Act. The learned counsel further submits that one of the occupations recognised by the Government for sugar industry and the agricultural section are Mukadams and Supervisors. Accordingly, the learned counsel submits that the agricultural overseer would fall within the occupation specified in the notification and, therefore, the BIR Act being applicable to the Petitioner should automatically be an employee. The learned counsel then submits by placing reliance on the judgment (Writ Petition No. 5135 of 1984 decided on February 14, 1995) of the learned single Judge of this Court (SRIKRISHNA, J., as he then was) that since the Respondent themselves had recognised the Petitioner to be an employee by issuing him a charge sheet and holding an enquiry under the standing orders framed, the Petitioner is an employee as defined under the BIR Act. The learned counsel also submits that the evidence on record indicates that the Petitioner worked as an employee and was not excluded from the definition.

5. Mr. Sawant, on the other hand, appearing for the Respondent, submits that the Petitioner could be considered to be an "employee" only if the employer had continuously and consistently accepted him as such. Merely because the Petitioner was charge-sheeted it would not conclude the issue as to whether the Petitioner was an employee. He submits that there is overwhelming evidence on record to show that the Petitioner was working in a technical capacity and, therefore, he could not be considered as an employee. The learned advocate places reliance on the judgment in the case of *The Premier Automobiles Limited Vs. The Premier Automobiles Employees' Union*, and *Shaukat Adam Malim v.*

Kokan Mercantile Co-operative Bank Ltd. and Ors. 2002 IV LLJ 1499 and submits that these judgments indicate that the issuance of the charge sheet to the Petitioner would not suffice to establish the fact that he is an employee. The learned Advocate then submits that it is for the Petitioner to assert and establish that he was working as an employee. The burden of proof is on the Petitioner and both the Courts below have found that the Petitioner has not effectively discharged his burden. He places reliance on the judgment of this Court in Northcote Nursing Home Pvt. Ltd. and Another Vs. Dr. (Ms) Zarine H. Rahina and Another, and of the Supreme Court in Birla Corpn. Ltd. Vs. Rajeshwar Mahato and Others, .

6. In the present case, the evidence on record indicates that the Petitioner was working as an agricultural overseer in the sugarcane development department. The Petitioner has stated in his deposition that he was supposed to guide the slip boys and field assistants only on certain technical issues. On this basis, the Labour Court and the Industrial Court have concluded that the Petitioner is not an employee. u/s 3(13) of the BIR Act, all persons who are employed to do any skilled or unskilled work in any industry or employees whether employed through a contractor or whether that person is no longer in employment are included. However, other categories of employees have been excluded. These are persons who are employed in the managerial, administrative, supervisory or technical capacity drawing basic wage exceeding Rs. 1000/-. According to the Courts below, the petitioner falls within the excluded categories of the definition since he was working in a technical capacity and was drawing a basic pay of more than Rs. 1000/-. The term technical capacity must in my opinion be read ejusdem generis with the other occupations found in the excluded part of the definition, namely, managerial, administrative, supervisory. A person who does technical work is doing work of skilled nature and he would not necessarily fall within the excluded part of the definition. It is only if he was employed in a technical capacity in the higher echelons of the establishment that he would be excluded from the definition. Just as managers, persons doing administrative work or supervisory work are excluded, the persons who are employed on the same level doing work which is technical in nature would be excluded. It would not be proper in my view to exclude persons doing skilled work although they do work which is technical in nature. In the present instance, the evidence on record shows that the workman was doing work which was of a skilled nature, that is he was giving technical knowledge to his assistants when required. He was also at the same time supervising work being done. In my view, the evidence on record itself indicates that the workman was doing skilled work and therefore, would fall in the inclusive part of the definition. Both the Labour Court and the Industrial Court have erred in coming to the conclusion that the Petitioner was excluded from the definition merely because he was doing the work which was technical in nature. Therefore, on the basis of the evidence on record itself, the Labour Court and the Industrial Court ought to have concluded that the Petitioner was working as a skilled workman and fell within the inclusive part of the definition.

7. Having held thus, I need not enter upon the controversy whether the issuance of charge sheet or show cause notice would automatically lead to the conclusion that the Petitioner is an employee.

8. In the result, the Petition is allowed and Rule made absolute with no order (sic) as to costs.

9. Since this is a complaint of the year 1995, the Labour Court will dispose of the complaint as expeditiously as possible and in any event, by March 31, 2005. Writ to go down immediately.