

(2015) 06 BOM CK 0153

In the Bombay High Court

Case No : Writ Petition No. 6428 of 2015

Reliance Communication Ltd. and Others

APPELLANT

Vs

Abhijeet

RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:

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

Citation : (2016) 1 ABR 459 : (2016) 2 MhLj 106

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

Bench : Single Bench

Advocate : Bhandari Anand P., for the Appellant; Ajinkya Kale and Badakh Vishal S., Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

R.V. Ghuge, J.—Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The Petitioner assails the impugned judgment of the Industrial Court, Jalna dated 26.03.2015 in Revision (ULP) No. 151/2013. By the said judgment, the judgment of the Labour Court dated 29.06.2013 in Complaint (ULP) No. 03/2011 has been quashed and set aside.

3. The Petitioner has set out the following prayer, which is relevant at this stage in the light of the order that I propose to pass:-

"(C) By appropriate writ, order or direction the judgment and order dated 26.03.2015 passed by the learned Member, Industrial Court, Maharashtra, Bench at Jalna in Revision (ULP) No. 151/2013 in Complaint (ULP) No. 3/2011 be quashed and set aside and Complaint (ULP) No. 3/2011 be dismissed with costs."

4. The Petitioner submits that the Respondent was appointed as a Sub Area Manager. He worked from 10.07.2009 till 01.03.2011. His appointment order dated 10.07.2009 indicates the nature of his duties, his salary structure and his

designation. His annual salary structure was Rs. 4,48,000/-. His basic pay with D.A. was Rs. 1,34,400/-per annum. Certain perquisites were added to his salary structure, which in the submission of the Petitioner, are not available to a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947.

5. Mr. Bhandari, learned Advocate has vehemently submitted on behalf of the Petitioner that the Labour Court had rightly come to a conclusion that the Respondent was not a workman and as such, his complaint under Item-1 of Schedule-IV of the MRTU and PULP Act, 1971 was untenable. He further submits that the Labour Court has rightly considered the evidence adduced before it and had held that the Respondent is not a workman.

6. Mr. Bhandari further submits that the Respondent was the Sub Area Manager for Aurangabad and Jalna districts. He was a diploma holder in Electronics and Telecommunication. There are six engineers and one staff member under his control. His nature of duties do not involve physical labour as is found in the case of a workman.

7. Mr. Bhandari has drawn my attention to the operative portion of the impugned judgment of the Industrial Court, which reads as under:-

"(A) The revision is partly allowed with costs of Rs. 10,000/-(Rupees Ten Thousand Only) to be paid by the respondents to the complainant (present Petitioner).

(B) The judgment and order dated 29.06.2013 passed by the learned Judge, Labour Court, Jalna in Complaint (ULP) No. 3/2011 is hereby quashed and set aside.

(C) The Complaint (ULP) No. 3/2011 is hereby partly allowed.

(D) The respondents are hereby directed to pay to the complainant (present petitioner) compensation of Rs. 40,00,000/-(Rupees Forty Lakhs only) within one month from the date of this order, failing which the amount shall carry interest @ 9% per annum from the date of this order.

(E) The record and proceedings of Labour Court, Jalna be returned immediately with a copy of the judgment."

8. Mr. Bhandari, therefore, submits that an astonishing figure of Rs. 40 lacs by way of compensation for a person who had worked for about 19 months with the Petitioner Organization, is unsustainable. The Industrial Court has proceeded on the premise that the loss of pay of the Respondent from the date of termination till the decision of the Industrial Court, would be somewhere around Rs. 20 lacs. Reasonable yearly interest, if added, would increase the loss caused to the Respondent and therefore, in paragraph 37 of the impugned judgment, the Industrial Court has concluded that Rs. 40 lacs compensation in lieu of reinstatement would be reasonable. Mr. Bhandari, therefore, submits that the impugned judgment deserves to be quashed and set aside.

9. Mr. Kale, learned Advocate appearing for the sole Respondent, has strenuously supported the impugned judgment. He submits that the Respondent is just 33 years of age. His service is to be continued till the age of 58 years as per the appointment order. He has 25 years of service left. His annual cost to company (CTC) is about Rs. 4,48,000/-. Considering his age, the remainder portion of service and CTC which would increase every passing year, Rs. 40 lacs as compensation is infact a lesser amount as compared to his earning had he been continued in service.

10. Mr. Kale further submits that the Respondent is a workman. He has to perform physical labour. He only has to carry out the orders. He cannot take decisions on behalf of the Company. The Labour Court erroneously came to the conclusion that the Respondent is not a workman despite the fact that the Petitioner/ Management did not lead sufficient evidence to establish that the Respondent is an officer and not a workman. He, therefore, prays for the dismissal of the writ petition.

11. Having considered the submissions of the learned Advocates and having gone through the petition paper book, I am of the view that the Labour Court as well as the Industrial Court have lost sight of the most important aspect in deciding the status of the Complainant/ Respondent herein.

12. The Division Bench of this Court, in the case of Chandrashekhar Chintaman Vaidya Vs. National Organic Chemical Industries Ltd., (2010) 4 BomCR 31 : (2010) 126 FLR 289 : (2011) 1 LLJ 200 : (2010) 3 MhLj 434 : [Letters Patent Appeal No. 130/2009 in Writ Petition No. 4980/2008 decided on 26.02.2010 (Nagpur Bench)], has considered various reports of the Apex Court as well as the High Court and has laid down the law as regards the factors to be taken into account while considering the status of the Complainant under Section 2(s) of the Industrial Disputes Act, 1947.

13. Paragraphs 11 and 36 of the said judgment read as under:-

"11. Learned Advocates for the parties have placed reliance on various citations. The Judgments along with purpose for which those are relied are as follows:-

[A] Appellant's citations and propositions :-

[1] Hussan Mithu Mhasvadkar Vs. Bombay Iron and Steel Labour Board and Another, (2001) 7 AD 456 : AIR 2001 SC 3290 : (2001) 91 FLR 232 : (2001) 7 JT 466 : (2001) LabIC 3330 : (2001) 2 LLJ 1520 : (2001) 6 SCALE 156 : (2001) 7 SCC 394 : (2001) SCC(L&S) 1190 : (2001) 4 SCT 413 : (2002) 1 UJ 8 : (2001) AIRSCW 3398 : (2001) 6 Supreme 779 .

Proposition :-

Primary duties of an employee, purpose, aim and object of the employment, i.e., predominant nature of duties performed by person claiming to be a workman under Section 2(s) of the Industrial Disputes Act, will be the true test to find out

the status as a workman.

[2] Mukand Ltd. Vs. Mukand Staff and Officers" Association, AIR 2004 SC 3905 : (2004) 2 CTC 430 : (2004) 101 FLR 219 : (2004) 3 JT 474 : (2004) 2 LLJ 327 : (2004) 3 SCALE 116 : (2004) 10 SCC 460 : (2004) SCC(L&S) 798 : (2004) 2 SCR 951 : (2004) 3 SLJ 204 : (2004) 2 UJ 1164 : (2004) AIRSCW 3731 : (2004) 5 Supreme 202 .

Proposition :-

The question of class to which the employees belong is to be decided not on the basis of grade in which they were placed, but on the basis of their duties, responsibilities and powers as laid down in Section 2(s) of the Industrial Disputes Act.

[3] D.P. Maheshwari Vs. Delhi Administration and Others, AIR 1984 SC 153 : (1983) 2 LLJ 425 : (1983) 2 SCALE 313 : (1983) 4 SCC 293 : (1983) 3 SCR 949 : (1983) 2 SLJ 542 .

Proposition :-

Occasional entrustment of supervisory managerial or administrative work will not take a person mainly discharging clerical duties out of purview of Section 2(s) of the Industrial Disputes Act.

On facts of the case, Hon"ble Supreme Court had interfered with the judgment of High Court where the judgment was rendered without dealing with the crux of the matter involved.

[4] Malabar Industrial Co. Ltd. Vs. Industrial Tribunal, Trivandrum, AIR 1958 Ker 202 : (1958) 2 LLJ 722 .

Proposition :-

Whether the employee concerned is a workman being a jurisdictional fact and issue, it can be scrutinized in proceedings under Article 226 of Constitution of India.

Main feature, pith and substance of his employment must be manual or clerical before the definition of "workman" under section 2(s) is attracted.

[5] S.K. Maini Vs. M/s. Carona Sahu Company Limited and others, AIR 1994 SC 1824 : (1994) 68 FLR 1101 : (1994) 3 JT 151 : (1994) 2 LLJ 1153 : (1994) 108 PLR 492 : (1994) 1 SCALE 889 : (1994) 3 SCC 510 : (1994) 2 SCR 333 : (1994) 1 UJ 735 .

Proposition :-

Predominant nature of work is to be seen, and entrustment of some supervisory or other work, which is incidentally done only a fraction of his entire work, will bring the employee within the purview of definition of the "workman" under

section 2(s) of the Industrial Disputes Act.

[6] Standard Chartered Bank Vs. Andhra Bank Financial Services Ltd. and Others, AIR 2006 SC 3626 : (2006) 5 SCALE 384 : (2006) 6 SCC 94 : (2006) 68 SCL 109 : (2006) 3 SCR 1 Supp : (2006) AIRSCW 3460 : (2006) 4 Supreme 238 .

Proposition :-

When entire evidence has come on record, burden of proof, whether it shifts etc., becomes immaterial.

Moreover, this judgment does not render any direct guidance on the facts of the case.

[7] State of Punjab Vs. Modern Cultivators, Ladwa, AIR 1965 SC 17 : (1965) 67 PLR 117 : (1964) 8 SCR 273 .

Proposition :-

Failure to produce documents would lead to only conclusion that if produced, those would have gone against the party who has withheld the documents and hence adverse inference against such party is liable to be drawn.

[8] Badat and Co. Vs. East India Trading Co., AIR 1964 SC 538 : AIR 1963 SC 538 : (1964) 4 SCR 19 .

This judgment is not relevant. Hence, it is not referred.

[B] Respondent's citations and the Propositions therein :-

1. Somnath Tulshiram Galande Vs. Presiding Officer, IInd Labour Court and Others, (2008) 2 ALLMR 628 : (2008) 5 BomCR 865 : (2008) 117 FLR 149 : (2008) 2 LLJ 767 : (2008) 4 MhLj 163 .

Proposition :-

Onus to prove that the claimant is a workman and to prove the test to satisfy all essential ingredients lies on one who claims said status. Unless proof of such a fact is emerging from evidence, it cannot be held that he is a workman.

2. Management of Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh, AIR 2005 SC 1050 : (2005) 3 ESC 305 : (2005) 105 FLR 1 : (2005) 2 JT 370 : (2005) 1 LLJ 1122 : (2005) 140 PLR 645 : (2005) 3 SCC 232 : (2005) 2 SCR 105 : (2005) 2 SLJ 188 : (2005) AIRSCW 1005 : (2005) 2 Supreme 26 .

Proposition :-

A person, principally a workman, should be employed in an industry, and must be performing manual, skilled, unskilled, technical, operational, clerical or supervisory work and merely because the employee has not been performing any managerial or supervisory duties, ipso facto he would become a workman.

3. Management of Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh, AIR 2005 SC 1050 : (2005) 3 ESC 305 : (2005) 105 FLR 1 : (2005) 2 JT 370 : (2005) 1 LLJ 1122 : (2005) 140 PLR 645 : (2005) 3 SCC 232 : (2005) 2 SCR 105 : (2005) 2 SLJ 188 : (2005) AIRSCW 1005 : (2005) 2 Supreme 26 .

Proposition :-

Burden of proving that a person is a workman lies on the person who claims to be a workman.

4. H.R. Adyanthaya etc. etc. Vs. Sandoz (India) Ltd. Etc. etc.[1994 II CLR 552].

Proposition :-

Even if it is proved that the complainant does not do any managerial or supervisory work, unless it is proved that he does work of the nature of manual, supervisory, technical and clerical, he does not become a workman under Section 2(s) of the Industrial Disputes Act.

5. Mukund Staff and Officers' Association Vs. Mukund Ltd. [2007 III CLR 296].

Proposition :-

The burden to prove that a person is a workman lies on the workman. The basic rule that who approaches the Court should prove the case is not departed in any of the provisions of Industrial Disputes Act.

6. Electronics Corporation of India Ltd. Vs. Electronics Corporation of India Services Engineers Union[2006 III CLR 704],

7. Bank of Baroda Vs. Ghemarabhai Harjibhai Rabari, AIR 2005 SC 2799 : (2005) 105 FLR 383 : (2005) 3 JT 312 : (2005) 2 LLJ 475 : (2005) 10 SCC 792 : (2005) SCC(L&S) 963 : (2005) 2 UJ 1020 , and

8. Arvind Anand Gaikwad Vs. Uni Abex Alloy Products Ltd. and Others, (1994) 3 LLJ 684 .

Proposition :-

The onus of proof was on the workman, though the employer had raised a dispute about his status."

"36. The law as to basic test as to facts to be proved for holding a person to be a workman under Section 2(s) of the Industrial Disputes Act can be said to be settled and can be summarized as follows:-

(a) The person does menial, ministerial or clerical work.

(b) If any of the parts of his duties involves any sort of supervision, which is on the material and not on the men.

(c) The predominant nature of duties discharged by the person i.e. the part of supervisory duties, if any, is not predominant.

(d) What is seen to be is not the designation and/or nomenclature, but performance of duties."

14. The Industrial Court has also lost sight of yet another aspect. The compensation in lieu of reinstatement in service with continuity and with or without back-wages, is not perfunctory. This principle is not to be invoked in every case of termination. The Apex Court has laid down the law in the following cases :-

(a) Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota Vs. Mohan Lal, (2013) 139 FLR 125 : (2013) 11 JT 343 : (2013) LabIC 4081 : (2013) 4 LLJ 105 : (2013) LLR 1009 : (2013) 10 SCALE 431 : (2013) 14 SCC 543 : (2013) 4 SCT 460 : (2013) AIRSCW 4877 ;

(b) Asst. Engineer, Rajasthan Dev. Corporation and Another Vs. Gitam Singh, (2013) 2 AD 553 : (2013) 136 FLR 908 : (2013) 2 JT 231 : (2013) 2 LLJ 141 : (2013) 1 LLN 318 : (2013) LLR 225 : (2013) 2 SCALE 126 : (2013) 5 SCC 136 : (2013) 2 SCC(L&S) 369 : (2013) 2 SCT 30 ;

(c) Bharat Sanchar Nigam Ltd. Vs. Man Singh, (2012) 132 FLR 500 : (2012) 1 SCC 558 : (2012) 1 SLJ 199 ; and

(d) Jagbir Singh Vs. Haryana State Agriculture Marketing Board and Another, AIR 2009 SC 3004 : (2009) 122 FLR 665 : (2009) 9 JT 396 : (2009) 15 SCC 327 : (2010) 1 SCC(L&S) 545 : (2009) 10 SCR 908 : (2009) 5 SLR 606 : (2009) 8 UJ 3727 : (2009) AIRSCW 4824 : (2009) 5 Supreme 629 .

15. This Court, in the State of Maharashtra Vs. Santosh Gorakh Patil and Others(2015) 145 FLR 826 : (2015) 2 LLN 81 : (2015) 3 MhLj 922 , has also followed the ratio laid down by the Apex Court in the above judgments. Needless to state, in the cases where the employment is for a short duration as like between one year to five years or six years or so and unemployment is for a long duration as like 15 years to 25 years or even 28 years, as has been the case before this Court in Santosh Gorakh Patil (supra), the ratio laid down by the Honourable Supreme Court in the above four judgments needs to be followed.

16. In the instant case, the Respondent has worked for about 19 months. His termination dated 01.04.2011 has been adjudicated upon by the Labour Court in it's judgment dated 29.06.2013, which is a span of about two years from the date of termination. The Respondent is a young person of 33 years age. In such cases, the Courts normally ought not to resort to this remedy of granting compensation. Of course, in cases where the Employer has lost confidence in an employee on account of acts like misappropriation or grave and serious nature, that the foisting of an Employee upon the Employer may not meet the ends of justice. In such cases, the option of quantifying compensation is possible.

17. While scrutinizing the impugned judgment, I am obviously required to consider the conclusions drawn by the Labour Court in it's judgment dated 29.06.2013.

18. In paragraphs 11 and 12, the Labour Court has considered the evidence adduced by the parties while answering Issue No. 1. I do not find that sufficient evidence to prove the nature of duties and the job profile of the Respondent was led before the Trial Court by both the sides. Merely because the Respondent admitted the terms and conditions of the appointment letter, would not auto establish that he is not a workman. I, therefore, find that proper evidence will have to be led by the parties in support of the contentious issues before the Labour Court. The Industrial Court was right in interfering with the conclusions of the Labour Court, but committed an error in granting compensation to the Employee. It should have remanded the matter to the Labour Court.

19. Considering the above, I am inclined to partly set aside the impugned judgment of the Industrial Court dated 26.03.2015 and exercise my extra ordinary jurisdiction to set aside the judgment of the Labour Court dated 29.06.2013 so as to enable both the sides to lead proper evidence before the Labour Court.

20. In the light of the above, this Writ Petition is partly allowed. The impugned judgment and order of the Industrial Court dated 26.03.2015 in Revision (ULP) No. 151/2013 (partly) and the judgment and order of the Labour Court dated 29.06.2013 in Complaint (ULP) No. 3/2011, are quashed and set aside. Complaint (ULP) No. 3/2011 is remitted back to the Labour Court. Both the litigating sides are at liberty to lead evidence in relation to Issue No. 1 in addition to the evidence already placed on record.

21. Needless to state that since the complaint is remitted back to the Labour Court, Revision (ULP) No. 151/2013 does not survive and is, therefore, disposed of.

22. The Labour Court shall endeavour to decide the complaint as expeditiously as possible and preferably on or before 31st December, 2015. The litigating sides shall not seek adjournments on unreasonable and frivolous grounds.

23. Both the litigating sides make a request that they may be permitted to appear before the Labour Court on a particular date so as to avoid wastage of time.

24. Considering the request, the litigating sides shall appear before the Labour Court on 13.07.2015 and place a copy of this order before the Labour Court. A separate notice of hearing need not be issued to the litigating sides.

25. Rule is, therefore, made partly absolute in the above terms.